

# **EXHIBIT A**

(Redacted)

UNITED STATES DISTRICT COURT

**CERTIFIED COPY**

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

|                   |   |                            |
|-------------------|---|----------------------------|
| EPIC GAMES, INC., | ) | <b>Evidentiary Hearing</b> |
|                   | ) |                            |
| Plaintiff,        | ) | <b>Volume 7</b>            |
|                   | ) |                            |
| vs.               | ) | NO. C 20-05640 YGR         |
|                   | ) |                            |
| APPLE, INC.,      | ) | Pages 1119 - 1424          |
|                   | ) |                            |
| Defendant.        | ) | Oakland, California        |
| _____             | ) | Monday, February 24, 2025  |

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

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Proceedings reported by electronic/mechanical stenography;  
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Monday, February 24, 2025

8:30 a.m.

P R O C E E D I N G S

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**THE CLERK:** These proceedings are being recorded by this Court. Any other recording of this proceeding, either by video, audio, including screenshots or other copying of the hearing, is strictly prohibited.

Your Honor, now calling 20-5640-YGR, Epic Games vs. Apple, Inc.

Lead counsel, please approach the lectern.

**THE COURT:** And appearances. Good morning.

**MR. BORNSTEIN:** Good morning, Your Honor. Gary Bornstein for plaintiff, Epic Games.

And I have with me at counsel table today Yonatan Even: Lauren Moskowitz, and Charlotte Rothschild.

**THE COURT:** And you have one more.

**MR. BORNSTEIN:** Oh, we do. And Michael Zaken. He was not sitting there just moments ago.

**THE COURT:** No, he was, but okay.

Mr. Perry, good morning.

**MR. PERRY:** Good morning, Your Honor. Mark Perry for defendant Apple, Inc.

With me at counsel table today is Cindy Richman.

**MS. RICHMAN:** Good morning, Your Honor.

1           **MR. PERRY:** Joshua Wesneski.

2           **MR. WESNESKI:** Good morning, Your Honor.

3           **MR. PERRY:** Camilla Branfield-Harvey, Heather Grenier  
4 of Apple.

5           **MS. GRENIER:** Good morning, Your Honor.

6           **THE COURT:** Good morning.

7           **MR. PERRY:** And Mr. Schiller, our corporate  
8 representative, will be there later, but he's also the first  
9 witness so we asked him to wait outside in the hall until the  
10 preliminaries are finished.

11           **THE COURT:** Okay.

12           **MR. PERRY:** Depending on how far we get today, we may  
13 rotate in two other attorneys, Anne Corbett and Harry  
14 Phillips, depending on the witness, Your Honor.

15           **THE COURT:** Okay. It would be great, because I like  
16 to try to remember names, and many of you I do remember but  
17 the newer people I don't. If you'd just write down the list  
18 and give it to the CRD so she can hand it up to me. Okay?

19           **MR. BORNSTEIN:** Of course.

20           **THE COURT:** All right. There is a motion that was  
21 filed --

22                               (Off-the-record discussion.)

23           **THE COURT:** It's not clear to me, Mr. Perry, that  
24 Rule 502(d) does what you're asking it to do.

25           There have been a number of documents which I have ruled,

1 Magistrate Judge Hixson has ruled, are not privileged. You've  
2 asserted the privilege. That's fine. You can always take  
3 that up at the appropriate time if it gets to that.

4 But, one, I'm not issuing a blanket order that says that I  
5 am agreeing that there's some privilege that I've not yet  
6 addressed or seen. So I'm not going to do that.

7 There is a protective order in place. Those protective  
8 orders are -- follow 502(d) and there are -- there are  
9 protections there.

10 For purposes of the privilege, Ninth Circuit law controls,  
11 and that's what we will follow. If you have an issue, you  
12 have to raise it.

13 **MR. PERRY:** Thank you, Your Honor. May I be heard  
14 very briefly on that?

15 **THE COURT:** You may.

16 **MR. PERRY:** To be clear, we're not seeking to revisit  
17 any of the privilege determinations. This is solely a  
18 question of waiver and preservation.

19 Our concern is not with Epic, to be clear, as we've  
20 explained to them. We do have a protective order in this  
21 case.

22 There is some law that says the use in a public proceeding  
23 of a document that has not finally been determined to be  
24 privileged could constitute a waiver from another plaintiff,  
25 Your Honor, from a governmental enforcement agency, or

1 something. That was the purpose of the request of the 502(d)  
2 order was that the use of the documents in this case -- which  
3 we do not -- we understand the Court's ruling, for these  
4 purposes they are not privileged, we understand that -- is not  
5 a waiver. In the event on appeal one of those documents were  
6 used here and ultimately found to be determined to be  
7 privileged, that that privilege claim has not been waived  
8 simply by the fact that we have proceeded with the hearing.

9 That was the purpose of the request for the 502(d) order  
10 is beyond the scope of this courtroom to other plaintiffs.  
11 And I think 502(d) does speak directly to that that says it's  
12 not a waiver in this proceeding, which Epic agrees, or any  
13 other proceeding, which is what we can't do with a protective  
14 order between the parties. We need an order from the Court to  
15 make that clear.

16 **THE COURT:** Response.

17 **MR. EVEN:** So as I think we tried to say, Your Honor,  
18 in our papers, the use in this case may or may not be a  
19 waiver. That depends on what Apple does with the documents.

20 Clearly if the Ninth Circuit ultimately rules that the  
21 document is privileged, that means that it's not been waived.

22 I don't think that the use by us is going to waive it, and  
23 so we don't understand why there needs to be a blank check for  
24 Apple to do whatever use. And we obviously don't care what  
25 happens in other cases. That's not our -- our issue. Our

1 issue is that there is a 502(d), kind of a standard  
2 run-of-the-mill one in this case, says there is no waiver  
3 generally. And the fact that Apple seeks a different order  
4 here we think speaks volumes because what Apple wants now is a  
5 blank check on documents that have been adjudicated not  
6 privileged?

7 **THE COURT:** Yeah. And I think my other concern is,  
8 is that it is dependent on how you use it. As you're well  
9 aware, you know, there's a general principle that we all  
10 follow, and you cannot use something both as a sword and a  
11 shield. So if Epic introduces a document that we've ruled is  
12 not privileged, and you know, you're entitled to respond.

13 Now, if you choose to introduce five other documents in  
14 response affirmatively, well, you can't claim a privilege. It  
15 seems to me that you've, at that point, either waived or  
16 risked waiving because you want to use it in an affirmative  
17 way.

18 Now you can use and respond to what it is that they are  
19 saying. But, again, I'm not giving any blanket order. And so  
20 the federal rules control. The federal rules offer  
21 protection. And I can't tell you how often in trial I get  
22 motions in limine with people asking me to enforce the rules.

23 The rules are the rules. They apply. You don't need an  
24 extra order, and I'm not prepared to give you one.

25 **MR. PERRY:** Thank you, Your Honor.

1 On a related note, we are most concerned obviously about  
2 Epic's use of these documents. To streamline the proceedings,  
3 may we have a standing objection to their use of those  
4 documents simply for preservation purposes so we don't to have  
5 pop up every time?

6 **THE COURT:** I'm assuming that there is some document  
7 which indicates what you've objected to. If I need to make a  
8 ruling, then -- I just need to -- Mr. Perry, I just need to  
9 know what your position is.

10 **MR. PERRY:** Yes, Your Honor, but --

11 **THE COURT:** And there are -- and that's always the  
12 issue with blanket objections. Although I agree, it does  
13 streamline proceedings.

14 **MR. PERRY:** And let me be very clear. There is a  
15 document. We have provided it to Epic. It's an index of all  
16 of the documents that we are calling category 2 under the  
17 protocol that this Court ordered, plus those documents that  
18 have been reviewed and rejected by the special masters. Epic  
19 has that. It's several thousand documents.

20 This Court has already ruled on the privilege, we think  
21 under Rule 103. It's a determinative ruling so that there's  
22 nothing left to preserve on the privilege claim. We simply  
23 wish to -- we don't know which ones they intend to use in the  
24 hearing so --

25 **THE COURT:** So if they've been identified, I don't

1 think that a standing objection with respect to those  
2 documents is a problem. Do you?

3 **MR. EVEN:** No, Your Honor.

4 **THE COURT:** Okay.

5 **MR. PERRY:** Thank you, Your Honor.

6 **THE COURT:** All right. So what is the plan for  
7 today?

8 **MR. BORNSTEIN:** So, Your Honor, we have in total five  
9 Apple witnesses who we will be calling throughout the course  
10 of the proceedings. And we're prepared to just run through  
11 them and get through as many as we can each day. I anticipate  
12 we will get through two. Maybe we'll start the third today.  
13 That's optimistic.

14 **THE COURT:** Can you tell me who they are?

15 **MR. BORNSTEIN:** Of course. So we're starting with  
16 Mr. Schiller, whom Your Honor knows.

17 Mr. Schiller is followed by Rafael Onak, that's O-N-A-K.

18 **THE COURT:** And his role?

19 **MR. BORNSTEIN:** He's in the user experience and  
20 design function at Apple.

21 **THE COURT:** Okay.

22 **MR. BORNSTEIN:** After Mr. Onak is Carson Oliver who  
23 testified back in May who runs the App Store.

24 **THE COURT:** Yes.

25 **MR. BORNSTEIN:** Following Mr. Oliver, we have Kunnal

1 Vij, that's K-U-N-N-A-L, last name, V-I-J. And Mr. Vij is in  
2 the finance function at Apple.

3 And then the last witness is Marni Goldberg. And  
4 Ms. Goldberg is in the communications and PR function at  
5 Apple.

6 **THE COURT:** Okay. Any other preliminaries?

7 **MR. BORNSTEIN:** Not from Epic, Your Honor.

8 **MR. PERRY:** Just one more brief one, Your Honor.

9 The parties have agreed to follow the same confidentiality  
10 protocols that we did in the last hearing and at the merits  
11 trial where we have done our best to identify those  
12 confidential information and highlighted them in the hard  
13 copy.

14 There may be some documents that we ask not be displayed  
15 on the public screen. And the parties may talk around certain  
16 numbers and personally identifiable information and the like.  
17 And we are not asking for the courtroom to be closed as a  
18 result of that agreement.

19 **THE COURT:** Okay.

20 **MR. BORNSTEIN:** And to be clear, Your Honor, the copy  
21 of the binder that's been provided to the Court is completely  
22 free and unredacted and no highlighting. So Your Honor has  
23 the documents in the form in which they were produced. The  
24 only things that are blacked out or redacted are redactions  
25 that Apple made in the course of producing the documents to

1 us.

2 **THE COURT:** Okay. And how -- who is controlling the  
3 public access? I mean we would typically do that. So how are  
4 we supposed to know?

5 **MR. BORNSTEIN:** So what we've done, Your Honor, is we  
6 have, in the documents that are intended to be put on the  
7 screen, we have blacked out or redacted anything that we  
8 understand to be confidential. So there should be no issues  
9 with the disclosure of confidential information.

10 As a failsafe, we've provided, or will on a  
11 witness-by-witness basis, provide to Apple copies of the  
12 documents that we're using highlighted to indicate for them  
13 which portions we intend to black out. If there's something  
14 that Mr. Perry or one of his colleagues wants us to redact  
15 that we haven't, we'll of course abide by that or just keep it  
16 off the screen.

17 **THE COURT:** Okay.

18 **MR. PERRY:** And, Your Honor, we haven't seen all  
19 those redactions so we're hoping not to have to pop up, but  
20 there may be a document-by-document issue.

21 There may be one or two documents where essentially the  
22 whole page is redacted or confidential or has much  
23 confidential information. And what we did last time was  
24 simply the podium counsel requested of the clerk to not  
25 display on the public screens, and the Court then ruled

1 whether or not that was appropriate in light of the  
2 confidentiality ruling, and -- and I think was turned on or  
3 off in that way.

4 **THE COURT:** Okay.

5 **MR. BORNSTEIN:** And we've had some correspondence  
6 over the past few days to make sure that we have clear the  
7 categories of information that Apple wants to keep  
8 confidential.

9 For example, there are internal project code names that  
10 Apple is concerned about revealing. There's personally  
11 identifying information. There's some financial information.  
12 So we've, I think, come to ground on what those categories are  
13 to try to facilitate things today.

14 **THE COURT:** Okay. All right. Anything else?

15 **MR. PERRY:** Nothing from Apple, Your Honor.

16 **THE COURT:** All right. Let's go ahead and call  
17 Mr. Schiller in. And just because it's been a few months, I  
18 will have him sworn in again even though he's still under  
19 oath.

20 **MR. BORNSTEIN:** And, Your Honor, we have some witness  
21 binders if Ms. Rothchild can bring them up to the witness  
22 stand.

23 **THE COURT:** You may.

24 **MR. BORNSTEIN:** Thank you.

25 **THE COURT:** Mr. Schiller, good morning.

1           **THE WITNESS:** Good morning, Your Honor.

2           **THE COURT:** I know you're still under oath and you  
3 have, I'm sure, abided by my last admonition. But I'm going  
4 to have you resworn in just as a good reminder.

5           **THE WITNESS:** Great.

6           **THE CLERK:** Please raise your right hand.

7  
8                           **PHILIP SCHILLER,**

9 called as a witness for the plaintiff, having been duly sworn,  
10 testified as follows:

11           **THE WITNESS:** I do.

12           **THE CLERK:** Please be seated.

13           Speak clearly into the microphone. Please state your full  
14 name and spell your last name for the record.

15           **THE WITNESS:** Philip William Schiller,  
16 S-C-H-I-L-L-E-R.

17           **THE COURT:** And just so the record is clear, we don't  
18 have a jury here today, but that's typically how we say things  
19 when we swear folks in. But just so --

20           That's okay.

21           My CRD is on the new side so she's still learning.

22           Go ahead.

23           **MR. BORNSTEIN:** All right. Thank you, Your Honor.

24           / / /

25           / / /

**DIRECT EXAMINATION**

**BY MR. BORNSTEIN:**

**Q.** Mr. Schiller, good morning.

**A.** Good morning.

**Q.** Good to see you again.

**A.** You too, sir.

**Q.** Now you've spent a fair bit of time in the courtroom so we don't need to do a full introduction. But I do want to do just a short refresher of your role in the injunction response process that brings us together, if I may.

So you -- Mr. Schiller, you led the team on the App Store that was responsible for doing the work to plan for Apple's response to the injunction; is that right?

**A.** Yes.

**Q.** Okay. And there was a cross-functional team of people that were involved in this process; yes?

**A.** Yes.

**Q.** And sometimes at Apple, that's -- cross-functional is abbreviated XF; is that right?

**A.** I don't recall seeing that.

**Q.** Okay. Now you were also one of the final decision-makers for what Apple's response to the injunction would be, correct?

**A.** Yes.

**Q.** And the other final decision-makers besides yourself were Mr. Cook, the CEO, and Mr. Maestri, who at the time was the

1 chief financial officer, correct?

2 A. Yes.

3 Q. And all three of you were on a price committee that made  
4 the final decision about the injunction response plan,  
5 correct?

6 A. Yes.

7 Q. But you, Mr. Cook, Mr. Maestri, you were the primary  
8 approvers?

9 A. Correct.

10 Q. And now we went over this in some detail in May, but it  
11 has been a while. I want to do just a quick refresher on some  
12 of the key features of the injunction response plan to set the  
13 stage for the next few days, okay?

14 A. Okay.

15 Q. So under what's called the purchase link entitlement  
16 program that Apple introduced to respond to the injunction,  
17 there is a 27 percent standard fee for external purchases made  
18 through the link, correct?

19 A. Yes.

20 Q. And then there is a seven-day tracking window on which  
21 that fee is still paid for future purchases that are made on  
22 the developer's website after clicking the link, correct?

23 A. Yes.

24 Q. And that's true even if those subsequent purchases made on  
25 the developer's website are made by the user on some device

1 other than their iPhone, correct?

2 A. Yes.

3 Q. All right. And you, Mr. Cook, Mr. Maestri, you all  
4 approved this 27 percent standard commission and seven-day  
5 tracking window?

6 A. Yes.

7 Q. The injunction response plan also includes a full-page  
8 warning screen that pops up when a user clicks on the link; is  
9 that right?

10 A. Yes.

11 Q. And the format and text of the warning screen is something  
12 that you and Mr. Cook and Mr. Maestri approved?

13 A. Yes.

14 Q. And there's also, as part of the injunction response plan,  
15 a restriction under which the purchase link, the external  
16 purchase link, cannot appear in the buy flow that leads to  
17 Apple's IAP link; is that right?

18 A. Yes. There are guidelines about that.

19 Q. Right. And the guidelines say that the external purchase  
20 link to the developer's website may not appear in the buy flow  
21 or the merchandising flow for IAP, correct?

22 A. Yes.

23 Q. All right. So for example, if a developer has in its app  
24 an item store where there are items for purchase and the  
25 prices are lifted [sic] and the choices are there for the

1 different items, the external purchase link cannot appear  
2 there in the store, correct?

3 **A.** Correct.

4 **Q.** All right. And that's another restriction that you,  
5 Mr. Cook, Mr. Maestri all approved.

6 **A.** That is a restriction. It's not another one. It's the  
7 one you were just describing.

8 **Q.** Yes. I mean -- thank you.

9 And there is also a restriction on the format or design of  
10 what the link may look like in -- in the app for external  
11 purchases, correct?

12 **A.** Yes.

13 **Q.** And there's a requirement that developers use what's  
14 called the plain button style.

15 **A.** Yes.

16 **Q.** And that too, that's a restriction that you, Mr. Cook,  
17 Mr. Maestri all approved.

18 **A.** Yes.

19 **Q.** All right.

20 Now, I want to turn to the timeline for Apple's response  
21 to the injunction.

22 You personally, Mr. Schiller, you started work on the  
23 response to the injunction the day or the day after receiving  
24 the Court's order; is that right?

25 **A.** Yes.

1 Q. And at that time when you started in September of 2021,  
2 there was a code name for that work. It was called Project  
3 Michigan, correct?

4 A. That I don't recall.

5 Q. All right. Well, let me see if I can refresh your  
6 recollection.

7 MR. BORNSTEIN: We need to be super careful here in  
8 what we're about to put on the screen. But if we could call  
9 up CX812.1. This is from a filing that Apple made with the  
10 Court. And if we could highlight the top button there.

11 (Exhibit published to witness, counsel, and the Court.)

12 MR. BORNSTEIN: Perfect. Top bullet, I mean.

13 Q. This is from a filing that Apple made with the Court in  
14 January 4th of 2025. And it says: Michigan was the internal  
15 project name used between September 2021 and December 2021 to  
16 refer to the changes to the App Store required under the  
17 injunction.

18 Do you see that?

19 A. I do.

20 Q. Does that refresh your recollection that "Michigan" was  
21 the code name used for the period listed here, September to  
22 December 2021?

23 A. I'm sorry, it does not.

24 Q. Okay. Do you have any reason to doubt that Apple's  
25 representation to the Court about the code name is correct?

1 A. I have no reason to doubt that.

2 Q. Okay. And then in December 2021, the date listed here,  
3 the project to respond to the injunction was put on hold,  
4 correct?

5 A. I don't recall being put on hold. We were working on it  
6 throughout. So I'm not sure what that means, to be put on  
7 hold.

8 Q. Okay. Well, December 2021, that was when the Ninth  
9 Circuit issued an order staying the effectiveness of this  
10 Court's injunction; do you recall that?

11 A. Yes.

12 Q. Okay. And that happened -- I'll represent to you it was  
13 December 8, 2021. Sound about right?

14 A. Yes.

15 Q. Okay. And then Apple went pencils down on Project  
16 Michigan the very next day, correct?

17 A. No. I don't know what that means, "pencils down."

18 (Simultaneous colloquy.)

19 BY MR. BORNSTEIN:

20 Q. All right. Let's take a look at Exhibit 486 in your  
21 binder, dot 1. And we can put it on the screen if it's easier  
22 for you, sir.

23 (Exhibit published to witness, counsel, and the Court.)

24 BY MR. BORNSTEIN:

25 Q. Now, 481 is an email dated December 9, 2021. Do you see

1 that?

2 A. I do.

3 Q. Okay. And it refers in the subject line to something  
4 called a weekly App Store roadmap sync. Do you see that?

5 A. I do.

6 Q. All right. And that's a regular meeting that happens at  
7 Apple talking about issues relating to the App Store?

8 A. Yes.

9 Q. Okay. And the first bullet there reads "Michigan is on  
10 hold for now." Do you see that?

11 A. I do.

12 MR. BORNSTEIN: All right. Your Honor, I'd move the  
13 admission of Exhibit 486.1 -- excuse me -- 486.

14 THE COURT: Any objection?

15 MR. PERRY: No objection, Your Honor.

16 THE COURT: It's admitted.

17 (Exhibit 486 received in evidence.)

18 BY MR. BORNSTEIN:

19 Q. And this project, Mr. Schiller, it stayed on hold for  
20 nearly a year and a half, correct?

21 A. Again, I don't recall it being on hold. And I didn't see  
22 this email so I can't speak to that.

23 Q. All right. Well, the Ninth Circuit decision affirming  
24 this Court's injunction came down in April of 2023. Do you  
25 remember that?

1 A. Yes.

2 Q. All right. And you testified previously that when the  
3 Ninth Circuit decision came down, there was a new effort and a  
4 new energy that was given to this project. Do you stand by  
5 that testimony?

6 A. Yes.

7 Q. All right. And around this time, the project was given a  
8 new code name, wasn't it?

9 A. Yes.

10 Q. And that was Wisconsin, right?

11 A. Yes.

12 Q. We moved one state over from Michigan to Wisconsin.

13 And Michigan ended in December 2021 and Wisconsin started  
14 in mid-2023, correct?

15 A. Again, I don't recall the project you call Michigan  
16 ending. From my perspective and in my discussions in  
17 meetings, I do remember the effort around Wisconsin having  
18 more people assigned to it and more work going on, on it at  
19 that time.

20 MR. BORNSTEIN: All right. Can we call up again  
21 Exhibit CX812.

22 (Exhibit published to witness, counsel, and the Court.)

23 BY MR. BORNSTEIN:

24 Q. And this is that filing to the Court which says that  
25 Michigan was the project code name between September and

1 December of 2021. Wisconsin was the internal project name  
2 used starting in the summer of 2023. Do you see that?

3 A. Yes.

4 Q. And there was no code name between December 2021 and the  
5 issuance of the Ninth Circuit decision in 2023, correct?

6 A. I don't know. Again, I don't recall the Michigan code  
7 name either.

8 Q. All right. There was -- there was a lot of work, sir,  
9 that was being done on anti-steering and alternative payment  
10 requirements in other jurisdictions outside the U.S. during  
11 this period, for example, in 2022, correct?

12 A. Yes.

13 Q. And there were projects relating to the Netherlands, to  
14 Korea, Japan, and others perhaps, right?

15 A. Yes.

16 Q. But there was not at this point in time between  
17 December 2021 and the Ninth Circuit decision in 2023 any  
18 serious effort devoted to U.S. injunction compliance, correct?

19 A. I don't recall what we were doing in the meetings during  
20 that time in 2022. I'm sorry.

21 Q. Would it surprise you that in all of the documents that  
22 we've gotten in response to the Court's order, there is little  
23 to no discussion of U.S. compliance in that period from  
24 December '21 when Michigan was put on hold until the Ninth  
25 Circuit decision?

1     **A.** I don't know. And I don't recall what was in the meeting  
2     agendas during that time.

3     **Q.** All right. Is it fair to say, however, that the work that  
4     was done for responding to orders and requirements in other  
5     jurisdictions, like the Netherlands and Korea and Japan, was  
6     then relied on for use in responding to this Court's  
7     injunction?

8     **A.** Not relied on. I wouldn't use that word, no.

9     **Q.** Okay. That -- that work for those other jurisdictions was  
10    taken into account and considered in the response to this  
11    Court's injunction, correct?

12    **A.** Again, that isn't quite how I'd describe it, no.

13    **Q.** Well, I'll give you the opportunity, Mr. Schiller. How  
14    would you describe the way that the work that Apple did in  
15    responding to these foreign orders was used in responding to  
16    the U.S. injunction from this Court?

17    **A.** I think throughout all this time, we've certainly given  
18    consideration to trying to make the solutions we have for our  
19    developers be -- make as much sense as we can around the  
20    world, be consistent where they're allowed to be around the  
21    world, and some of the engineering work and some of the  
22    documentation work to be leveraged and consistent between them  
23    where it makes sense. So we have to think about some of those  
24    elements as we're doing any one of these projects.

25    **Q.** Okay. Well, we'll -- we'll dive into some of that a bit

1 more in the course of today.

2 So when -- when Project Wisconsin started after the Ninth  
3 Circuit decision in 2023, there were a range of implementation  
4 issues in terms of responding to the Court's injunction that  
5 had not yet been decided by Apple; is that correct?

6 **A.** Yes.

7 **Q.** For example, Apple had not yet decided after the Ninth  
8 Circuit decision whether Apple would charge any commission at  
9 all on external purchase links, correct?

10 **A.** Correct.

11 **Q.** And Apple had not formed a view, if it were going to  
12 charge a commission, on what that commission would actually  
13 be, correct?

14 **A.** Correct.

15 **Q.** And Apple had not made a determination on whether there  
16 would be a tracking window or how long it would be, correct?

17 **A.** Correct.

18 **Q.** And Apple had not made a final decision on what the format  
19 or text of any warning screen would be, correct?

20 **A.** Correct.

21 **Q.** And at that point after the Ninth Circuit decision, Apple  
22 had not yet made any decision on whether the external purchase  
23 link would be allowed to be in the buy flow or not?

24 **A.** Correct.

25 **Q.** And lastly, Apple had not made a decision after the Ninth

1 Circuit decision in April 2023 on what the restrictions would  
2 be on the format and design of the link itself, correct?

3 **A.** Correct.

4 **Q.** All right. So I want to talk about how it was that Apple  
5 made some of those decisions over the course of 2023. And  
6 I'll start with the commission.

7 So when Project Wisconsin started after the Ninth Circuit  
8 decision, your preference personally was for Apple not to  
9 charge a commission, correct?

10 **A.** Preference? I don't think that's an appropriate word. I  
11 don't -- it's not about a preference. I'm just trying to  
12 understand what is required and what it takes to meet the  
13 injunction. And so we had many discussions about the  
14 commission or not and what that means. And so that was  
15 certainly an area we talked a lot about.

16 **Q.** My question, Mr. Schiller, was about your personal view.  
17 Your personal view was that Apple should not charge a  
18 commission for external purchase links in response to this  
19 Court's injunction in the spring of 2023, correct?

20 **A.** Again, I -- my view was not about what we should or  
21 shouldn't do. It's about what we can or can't do and what  
22 meets the requirements of the injunction and what are all the  
23 considerations therein.

24 **Q.** Mr. Schiller, you have a business responsibility for the  
25 App Store. Is it your testimony that you didn't actually have

1 a business preference about how to comply with the injunction  
2 and what would be preferable from a business perspective in  
3 terms of charging a commission?

4 **A.** I did not approach it -- my -- my input into the process  
5 was not about a business preference. It was about what is  
6 required to meet the injunction and -- and what is allowed or  
7 not allowed. That was -- my thought process on it.

8 **Q.** Okay. Well, in the first half of May 2023, you gave  
9 guidance to the team working on Project Wisconsin that Apple  
10 would not charge a commission; isn't that right?

11 **A.** Here, I'm -- in order to answer, I have to ask a question.  
12 I'm sorry.

13 My discussions with the team about guidance and input on  
14 what we can or cannot do was directly with lawyers about what  
15 does the legal injunction mean. And so I want to make sure as  
16 I answer that I don't violate privilege that's not mine to  
17 violate.

18 So I'm -- I'm concerned just -- I want to make sure I have  
19 the right direction on what I'm allowed to and not allowed to  
20 say --

21 **Q.** Well --

22 **A.** -- that would be violation of privilege.

23 **Q.** Sure. Fortunately we've had some guidance from the Court  
24 in an order issued on New Year's Eve -- the Court was working  
25 hard -- regarding the scope of the privilege that can be

1 asserted here.

2 You can -- and I'll be corrected if I'm wrong about this.  
3 You can testify about the decision-making process that you  
4 went through and the instructions that you gave because that's  
5 exactly the information the Court ordered to be produced and  
6 is interested in hearing about.

7 So I'll repeat the question.

8 In the first half of May of 2023, you gave guidance to the  
9 team that Apple would not charge a commission on the external  
10 purchase link; is that right?

11 **A.** I don't recall my input as guidance. I remember having  
12 discussions with the legal team and the business teams about  
13 whether a commission could be charged or not. And there were  
14 legal discussions I had about what is allowed or not allowed.  
15 I don't consider it guidance that we were going to or not  
16 going to do something.

17 **Q.** All right. I'll -- I'll try it one more time just to make  
18 sure I have it clear.

19 Your testimony, sir, is that you did not actually give  
20 guidance or instruction to the team on how to proceed in terms  
21 of whether to have a commission or not in May of 2023? That's  
22 your testimony?

23 **A.** My recollection is that I had a discussion with the team  
24 and with the lawyers about the commission and whether we could  
25 charge one or not. That's my recollection.

1 Q. Okay. Well, let me see if I can refresh your  
2 recollection.

3 There's someone who works at Apple and worked with you on  
4 this process by the name of Jeff Robbin; is that right?

5 A. Yes.

6 Q. Okay. And what's Mr. Robbin's role at Apple?

7 A. He works on the Apple Services team leading the  
8 engineering of the -- many of the services.

9 Q. Okay. Let me ask you to take a look at Exhibit 273.

10 MR. BORNSTEIN: Don't put this up on the screen.

11 Q. I want to see if I can refresh your recollection using  
12 this document.

13 And I'm looking at 273.1 which is the first page.

14 A. I see that.

15 Q. Okay.

16 Okay for me to proceed?

17 Okay. And if you see 273 is an email -- sorry -- a set of  
18 notes labeled "Wisconsin XF Meeting Notes."

19 Do you see that?

20 A. I do.

21 Q. Okay. This is why I asked you about cross-functional and  
22 whether that's what "XF" means.

23 And does this refresh your recollection about what "XF"  
24 means?

25 A. I just see that somebody wrote this.

1 Q. Okay.

2 A. I don't normally hear those -- those letters used in that  
3 way.

4 Q. That's fine.

5 And if you see at the bottom of the first page, there's a  
6 thing that says "Notes," and it says "Phil/Jeff provided new  
7 guidance." Do you see that?

8 A. I see that.

9 Q. Is it fair to assume that Phil is you and Jeff is  
10 Mr. Robbin?

11 A. Yes.

12 Q. And I want you, if you can, to just read the top two  
13 bullets there about the guidance you gave, including the one  
14 that says, "Apple will not seek to charge a commission on  
15 those sales."

16 Do you see that?

17 A. I see that.

18 Q. Okay. Does this refresh your recollection that this is  
19 guidance that you gave to the team in May of 2023?

20 A. No. My recollection is not this. My recollection is that  
21 I had a discussion with the legal team around what we are or  
22 not required or allowed to do. And I don't believe I ever  
23 specifically gave guidance that we are or are not doing  
24 anything one way or the other.

25 Q. Okay. Well, let's -- let's look at some -- some

1 subsequent documents.

2 There was a meeting a few -- about a week after these  
3 notes we just looked at on May 18 of 2023 that you attended  
4 for a Wisconsin business update.

5 Do you recall -- happen to recall meeting on that date  
6 about this?

7 **A.** I remember we had a meeting in the late spring to early  
8 summer of that time. I don't recall the date.

9 **Q.** Okay. Let's just take a look, see if we can square this  
10 in time, at Exhibit CX488.

11 (Exhibit published to witness, counsel, and the Court.)

12 **MR. BORNSTEIN:** We should really wait to put things  
13 on the screen until they've been admitted into evidence.

14 **Q.** Now Exhibit 488, this is a calendar invitation for a  
15 meeting on May 18, 2023, correct?

16 **A.** Yes, I see that.

17 **Q.** All right. And you see your name there is listed as  
18 having accepted the invitation?

19 **A.** Yes.

20 **MR. BORNSTEIN:** All right. Your Honor, I'd move the  
21 admission of Exhibit 488.

22 **MR. PERRY:** No objection.

23 **THE COURT:** It's admitted.

24 (Exhibit CX-488 received in evidence.)

25 / / /

1 **BY MR. BORNSTEIN:**

2 **Q.** And the subject line for this meeting invite is "Wisconsin  
3 Business Update," correct?

4 **A.** Yes.

5 **Q.** All right. Can we assume this May 18, 2023, meeting is  
6 the one that you were talking about that you remember in the  
7 spring?

8 **A.** I don't recall if this is the exact meeting or not that I  
9 was thinking of.

10 **Q.** All right. Well, let's -- let's take a little further  
11 look, see if we can get there.

12 There was a deck that was presented to you at this meeting  
13 regarding the current state of proposed responses to the  
14 injunction; is that right?

15 **A.** I don't recall.

16 **Q.** All right. Well, let's take a look, if you would, at  
17 Exhibit 272.

18 Actually, you know what, can we look first, Mr. Schiller,  
19 at Exhibit 536. I apologize for the switcheroo.

20 (Pause in the proceedings.)

21 **BY MR. BORNSTEIN:**

22 **Q.** Just let me know when you have 536, please.

23 **A.** I do.

24 **Q.** Great.

25 So Exhibit 536 is a set of messages dated May 18, 2023.

1 Do you see that?

2 A. I do.

3 Q. Okay. And just a little bit of technical plumbing here.  
4 These date and time stamps are identified as UTC. I'll  
5 represent to you that's UK Greenwich Mean Time. So about  
6 eight hours typically, sometimes seven, ahead of where we are  
7 here in California. Okay?

8 A. Yeah, Universal Time Code. Correct.

9 Q. Okay. So while these people work hard, these probably  
10 weren't sent at 2:18 in the morning in the Pacific Time zone.  
11 Ot

12 And if you look at the bottom of Exhibit 536.1, you'll see  
13 that Bri Cote writes, "Are you presenting today to Phil?" Do  
14 you see that?

15 A. Yes.

16 Q. All right. And that would be a reference to yourself.

17 A. I believe so.

18 Q. Okay. And if you look at the next page, you will see that  
19 Mr. Kim has two slides, a proposal 1 and a proposal 2 that  
20 look like excerpts from a deck to be presented to you,  
21 correct?

22 A. Correct.

23 Q. All right.

24 Now, let me put in front of you the deck that these two  
25 slides appear to be from. And that is Exhibit 272.

1 Can you turn there?

2 **MR. BORNSTEIN:** Oh, and, Your Honor, I would move  
3 Exhibit 536 into evidence.

4 **THE COURT:** Any objection?

5 **MR. PERRY:** Objection, foundation on this one.

6 **THE COURT:** You need --

7 **MR. PERRY:** I'm sorry, Your Honor, objection --

8 **THE CLERK:** Wait one moment.

9 Okay.

10 **MR. PERRY:** Objection, Your Honor, as to foundation.  
11 Mr. Schiller's involvement on this one.

12 **MR. BORNSTEIN:** That's fine, Your Honor. I'll  
13 withdraw this one.

14 **THE COURT:** Okay.

15 **MR. BORNSTEIN:** Okay.

16 **Q.** Let's take a look at the deck at Exhibit 272, if you  
17 would.

18 **A.** Okay.

19 **Q.** Okay. And Exhibit 272 is a deck from May 2023. It says  
20 "Proposed Responses to Epic Injunction," correct?

21 **A.** Yes.

22 **Q.** And if you just page through it, you can see, for example,  
23 on page dot 7 there is that proposal 1 slide that we saw on  
24 Exhibit 536; on page dot 11, you'll see the proposal 2 slide  
25 that we saw on Exhibit 536. Correct?

1     **A.** I didn't go back and forth to verify if they're the same  
2     as the previous slide deck or not, but I see these slides.

3     **Q.** All right.

4             Can we assume that this, Mr. Schiller, is the May 18 --  
5     the deck that was presented at this May 18 meeting that was  
6     being discussed by your colleagues in Exhibit 536?

7     **A.** I -- I can't verify that. Again, I don't recall if this  
8     was the meeting that I'm thinking of we had in the summer of  
9     '23. And I don't know that this was the deck that was  
10    presented to me on that call. I can't state either way.

11    **Q.** All right. Well, let's do it this way, Mr. Schiller. We  
12    saw a May 18, 2023, Wisconsin business update meeting invite  
13    that you accepted in Exhibit 488, correct?

14    **A.** Yes.

15    **Q.** All right. And we have a set of messages exchanged  
16    between your colleagues about presenting to Phil, on May 18 of  
17    2023 that we just saw in Exhibit 536, correct?

18    **A.** Yes.

19    **Q.** And we have now a deck, Exhibit 272, about proposed  
20    responses to the Epic injunction which contains slides that  
21    you can see on Exhibit 536, correct?

22    **A.** Yes.

23             **MR. BORNSTEIN:** I would move the admission, Your  
24    Honor, of Exhibit 272.

25             **MR. PERRY:** No objection, Your Honor.

1           **THE COURT:** It's admitted.

2                     (Exhibit CX-272 received in evidence.)

3           **MR. BORNSTEIN:** Thank you.

4           **THE COURT:** And do I have an electronic copy of these  
5 documents? Because the print is somewhat small.

6           **MR. BORNSTEIN:** I don't know that you have one, Your  
7 Honor. We can certainly get you one. I will say that  
8 specifically with respect to 272, I have tried blowing it up  
9 as much as I can on my own computer. And when you blow it up,  
10 it just gets blurry. It's just unfortunately the way it was  
11 produced to us. It's a difficult document to read.

12           **THE COURT:** Do I have an electronic version -- or do  
13 you have an electronic version of this that I could more  
14 easily read without magnifying glasses?

15           **MR. PERRY:** Your Honor, we do not have one here, but  
16 we can look for one.

17           This particular document, like some of them, my  
18 understanding this is essentially a PDF. It's not the actual  
19 document is the reason for the legibility issue on this one.  
20 It's the way it was maintained.

21           But we can get -- we can get the best electronic version  
22 available. The parties can work together --

23           **THE COURT:** Okay.

24           **MR. PERRY:** -- and get the Court a set of those.

25           **THE COURT:** And I don't know if it's ultimately going

1 to be an issue, but to the extent that I'm relying on these  
2 documents, it would be helpful to be able to read them.

3 **MR. BORNSTEIN:** I share that desire, Your Honor.  
4 What we can try to do today, I'll ask Mr. Lyon, who's  
5 controlling the technology for us, to see if he can blow them  
6 up as much as possible, if the screen would help the Court and  
7 the witness read.

8 **THE COURT:** Okay. Thank you.

9 **BY MR. BORNSTEIN:**

10 **Q.** Okay. So I'd like you to turn, Mr. Schiller, to the  
11 second page of the slide deck. It's 272.3. And if you --  
12 you'll see there are three columns: Requirements, Allowances  
13 and Ambiguous.

14 Do you see that?

15 **A.** I see that.

16 **Q.** These are all listed as key elements under consideration  
17 as of May 2023 for responding to this Court's injunction,  
18 correct?

19 **A.** I see that, yes.

20 **Q.** Okay. And I want to focus on the right-hand column that  
21 says "Ambiguous." And there are five different items that are  
22 identified here as ambiguous, correct?

23 **A.** Yes.

24 **Q.** And then if we move through the deck, you will see -- and  
25 we'll go through them so you don't have to trust me just yet.

1 We move through the deck, there are proposals about how to  
2 handle each of these ambiguous items.

3 So let's start by going to 272.7.

4 (Exhibit published to witness, counsel, and the Court.)

5 **MR. BORNSTEIN:** See if we can blow that up for  
6 everybody. Thank you.

7 (Exhibit published to witness, counsel and the Court.)

8 **BY MR. BORNSTEIN:**

9 **Q.** And there on the left-hand side of what's labeled  
10 "Proposal 1" are ways to deal with each of the five ambiguous  
11 items that were identified on the prior slide.

12 Do you see that?

13 **A.** Yes, I do.

14 **Q.** All right. And at the bottom of these five ambiguous  
15 items, there is commission rate. And so proposal number 1  
16 that was being shown to you in May of 2023 was no commission,  
17 correct?

18 **A.** I don't recall this slide or this slide deck.

19 **Q.** Okay. The people that we saw on Exhibit 536 such as  
20 Timothy Kim and Bri Cote, they're people at Apple who were  
21 working on Wisconsin and the response to the Court's  
22 injunction, correct?

23 **A.** Timothy Kim, yes. Bri, I believe so. I'm not sure.

24 **Q.** Okay. You don't have any reason to doubt, sir, that this  
25 was a deck they were putting together for you for purposes of

1 a meeting, right?

2 **A.** I don't have any reason to doubt that.

3 **Q.** Okay.

4 Now, I want --

5 **THE COURT:** Are there -- are they still employees at  
6 Apple?

7 **THE WITNESS:** Timothy Kim, yes. I'm sorry, I don't  
8 know Bri well so I can't say.

9 **THE COURT:** Okay.

10 **BY MR. BORNSTEIN:**

11 **Q.** Now, this proposal 1 with the no commission, if you look  
12 up at the top of the ambiguous column for display placement  
13 and display frequency, there are some restrictions identified  
14 for where the link can appear.

15 Do you see that?

16 **A.** Yes.

17 **Q.** For example, for display placement, it needs to be  
18 independent of the buy flow, and for display frequency it has  
19 on the outside of the buy flow, correct?

20 **A.** Yes.

21 **Q.** And that's consistent with what Apple -- generally  
22 consistent with where Apple ultimately landed to require that  
23 the link be outside of the buy flow as we discussed, correct?

24 **A.** Generally, yes.

25 **Q.** And in the bottom right under "Key Risks," you can see

1 that the deck says that [REDACTED]

2 [REDACTED]?

3 A. [REDACTED]

4 Q. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 A. [REDACTED]

8 [REDACTED]

9 Q. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 A. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 Q. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 A. [REDACTED]

21 [REDACTED]

22 Q. All right. Well, let's -- let's look at proposal 2 then.

23 Proposal 2 is on 272.11.

24 And in this other proposal, proposal 2, at the bottom

25 left, you can see the proposal was to have a discounted

1 commission, correct?

2 A. I see that.

3 Q. And with the discounted commission over on the right on  
4 the bottom, [REDACTED]

5 [REDACTED]

6 A. [REDACTED]

7 Q. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 A. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Q. All right. Well, let's go back to the substance of  
15 proposal 2 then.

16 (Exhibit published to witness, counsel, and the Court.)

17 BY MR. BORNSTEIN:

18 Q. In proposal 2, coupled with this discounted commission  
19 were less restrictive rules regarding placement and frequency.  
20 Do you see that?

21 A. I see that.

22 Q. Okay. So, for example, in the prior slide, proposal 1, no  
23 commission, there was a requirement that the link not appear  
24 in the buy flow. But here in proposal 2, when Apple was  
25 contemplating the charging of a commission, display placement

1 says anywhere including on the merchandising page, correct?

2 A. I see that.

3 Q. All right.

4 So let's -- let's turn to Exhibit 272.14 or page 272.14.

5 (Exhibit published to witness, counsel, and the Court.)

6 BY MR. BORNSTEIN:

7 Q. And this shows a comparison of the two options that we  
8 were just -- sorry -- the two proposals that we were just  
9 discussing, proposal 1 and proposal 2, correct?

10 A. Yes.

11 Q. So proposal 1 is the no commission option with the more  
12 stringent restrictions on placement of link. And proposal 2  
13 is the discounted commission option with less stringent  
14 restrictions on the placement of link, correct?

15 A. Yes, I see that.

16 Q. All right. And now I don't want you to say any numbers.  
17 And we have them blacked out on the screen. But if you look  
18 at the bottom, there is information about the estimated  
19 revenue impact of these two proposals, correct?

20 A. Yes.

21 Q. And again without saying any numbers, the estimated  
22 revenue impact of proposal 1, no commission, is a lot higher  
23 than the estimated revenue impact of proposal 2, correct?

24 A. I see that.

25 Q. And ultimately the entitlement link program that Apple

1 launched in January of 2024 includes both the placement  
2 restrictions of proposal 1 and the commission from proposal 2.  
3 Correct?

4 **A.** Yes.

5 **Q.** Apple adopted both items [REDACTED]  
6 [REDACTED]

7 **A.** Well, I don't think the final implementation is exactly  
8 what either of these are. I think these were presentations  
9 that you're showing me that have some of the general  
10 descriptions but not the exact implementations either way.

11 **Q.** We'll get there, sir. But before we get to the exact  
12 implementations, this slide -- excuse me -- this deck  
13 indicates that [REDACTED]  
14 [REDACTED]

15 **A.** [REDACTED]

16 **Q.** Right.

17 And Apple chose to implement a commission, correct?

18 **A.** Yes.

19 **Q.** All right. And is your testimony just now that the  
20 commission that Apple actually chose is [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 **A.** [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

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[REDACTED]

[REDACTED]

Q. All right. Well, we'll see if we can get there as we go through additional items. But to make sure we have a comparison on these ambiguous items -- we can keep this on the screen -- for display placement, what Apple actually did in the January 2024 purchase link entitlement that it launched is to require that the purchase link not be displayed on any page that is part of an in-app flow to merchandise, correct?

A. Yes.

Q. So it took the more restrictive of these two options.

A. On that one point, yes.

Q. Yes.

On display frequency, the rule that Apple actually imposed in January of last year is that the link can only appear once in an app, correct?

A. Correct.

Q. All right.

In --

A. Which is not the same of either of those lines.

Q. That is correct. It is more restrictive than proposal 2 which says once per page. You actually say only once per app, correct?

A. Yes.

Q. On display UI and design, Apple requires that -- Apple

1 requires that we follow the plain -- excuse me -- that  
2 developers who want a purchase link follow what's called the  
3 plain button style; is that correct?

4 **A.** Yes.

5 **Q.** All right. Now, I want to just turn back for a second  
6 while we're talking about the button style to page 272.4 in  
7 this deck.

8 And 272.4 has what are called "working assumptions of the  
9 compliance plan," correct?

10 **A.** That's what it says.

11 **Q.** All right. And one of those working assumptions in May of  
12 2023, in the middle, is flexibility of CTA design, e.g.,  
13 buttons, correct?

14 **A.** Yes.

15 **Q.** And CTA, that means "call to action," correct?

16 **A.** Correct.

17 **Q.** In other words, what the link looks like. Correct?

18 **A.** I would assume so.

19 **Q.** Okay. Now turn to the next page, 272.5.

20 (Exhibit published to witness, counsel, and the Court.)

21 **BY MR. BORNSTEIN:**

22 **Q.** 272.5 near the top -- first of all, it's headed "Known  
23 Conditions and Restrictions on External Links," correct?

24 **A.** Yes.

25 **Q.** And at the top, it says "Developers must be able to," and

1 then it has a list of things that Apple understood developers  
2 must be able to do, correct?

3 A. It says developers must be able to, yes.

4 Q. Right. And those are things that the people who put this  
5 together understood at the time Apple must be able to do as  
6 part of the injunction response plan, correct?

7 A. I wouldn't say that. It -- it doesn't say that. And I  
8 don't recall someone saying it that way.

9 Q. Okay. But one of these things that was identified by  
10 these people at Apple working on the injunction response plan  
11 at the time in May of 2023 that developers must be able to do  
12 is in the second bullet, "Format these prompts as buttons or  
13 other calls to action and not just blue HTML links." Correct?

14 A. I see that it says that.

15 Q. Right. And Apple ultimately, though, did choose a --  
16 what's called a plain button style for the links. That's what  
17 developers are required to implement, correct?

18 A. Along with a linkout icon button, yes.

19 Q. Correct. And Apple actually -- contrary to what's on this  
20 slide, Apple did that. Apple chose the plain button style  
21 precisely so that it would match what hyperlinks and Internet  
22 links look like, correct?

23 A. Well, you said two things in the sentence. The second  
24 part I agree with. But the first part I don't. This --  
25 this -- this sentence doesn't say either way what the buttons

1 should look like.

2 But it -- that -- what we did create is -- is the second  
3 half of your sentence is -- is what we did.

4 Q. So that that's clear, what you did is you required -- when  
5 I say "you," I mean Apple.

6 A. Yes, thank you.

7 Q. What Apple did, subject to your direction, in creating a  
8 requirement for the format of the links is require what's  
9 called the plain button style. And Apple did that so that the  
10 links would look like hyperlinks or other Internet links that  
11 people are used to seeing, correct?

12 A. Yes. But, again, I don't want to leave out that "and  
13 include a actual button, a square with an arrow out of it," as  
14 part of it. It isn't only the text.

15 Q. Okay. Let's go back to where we were on the list of -- of  
16 items on the prior slide that we had up.

17 (Exhibit published to witness, counsel, and the Court.)

18 MR. BORNSTEIN: No, the one before that. Sorry.

19 (Exhibit published to witness, counsel, and the Court.)

20 BY MR. BORNSTEIN:

21 Q. Now going to the list of the five items with proposal 1  
22 and proposal 2 that appears here on Slide .14.

23 Do you see that?

24 A. Yes.

25 Q. Okay. Just going back to where we were. We had gone

1 through the first three.

2 On pricing language, Apple chose to adopt specific  
3 templates that developers must use for the link, correct?

4 **A.** Yes.

5 **Q.** All right.

6 And then finally for the commission rate, Apple obviously  
7 chose to impose a commission rather than no commission,  
8 correct?

9 **A.** Yes.

10 **Q.** All right.

11 Now, let's talk a little bit about how we get from this  
12 May 18 deck to the final decision that Apple makes.

13 First of all, after this, there is a meeting on June 1st  
14 that you attended along with other senior executives including  
15 Mr. Cook. Do you recall that?

16 **A.** I recall there was a meeting. And that is the meeting I  
17 was referring to, that there was a meeting in late spring  
18 early summer. That -- that is the meeting I was referring to.  
19 I don't remember the exact date.

20 **Q.** Okay. Let's just, for the sake of the record, have you  
21 look at Exhibit 485, please.

22 **A.** Yes.

23 **Q.** Do you have 485?

24 485 is an email invitation, subject, Epic injunction  
25 implementation, dated for a meeting on June 1st of 2023, and

1 you see you and Mr. Cook are both listed here as having  
2 accepted the invite, correct?

3 **A.** Yes.

4 **MR. BORNSTEIN:** All right. Your Honor, I would move  
5 the admission of Exhibit 485.

6 **MR. PERRY:** No objection, Your Honor.

7 **THE COURT:** 485 is admitted.

8 (Exhibit CX-485 received in evidence.)

9 **BY MR. BORNSTEIN:**

10 **Q.** And by the way, Mr. Schiller, regarding the prior deck,  
11 Exhibit 272, who would be the right person at Apple for us to  
12 ask questions about if you were unable to answer what these  
13 various items mean? Is it Mr. Kim?

14 **A.** (Reviewing document.)

15 Again, since I don't recall the deck, it's hard for me to  
16 say who to ask about the deck that I don't recall. Based on  
17 the messages exchanged you showed, it appears he may have  
18 worked on this deck and he may be able to answer some  
19 questions about it. But, again, I can't be specific since I  
20 don't recall this exact deck.

21 **Q.** All right. Let me try the question a different way.

22 **MR. BORNSTEIN:** Can we put up Exhibit 488 that's  
23 already in evidence?

24 **Q.** This is the -- we can put it on the screen for you if it's  
25 easier. This is the calendar invite for that meeting in

1 May -- May 18 that you are listed as accepting.

2 (Exhibit published.)

3 **BY MR. BORNSTEIN:**

4 **Q.** Do you see that?

5 **A.** Yes.

6 **Q.** Okay. Looking at the list of attendees of this meeting,  
7 does that help you identify who are the people who'd be  
8 responsible for putting together a deck like this for your  
9 review?

10 **A.** I'm sorry, no. It could come from anybody. There's no  
11 specific strict requirement of who's working on a slide deck.  
12 So I don't know who worked on those slides specifically. So  
13 I'm sorry, I can't say.

14 **Q.** Okay. Who are the people?

15 **MR. BORNSTEIN:** Sorry, no, keep that up.

16 **Q.** Who are the people on this list who are responsible -- who  
17 are junior to you who are responsible for making  
18 recommendations about whether to charge a commission?

19 **A.** I don't believe there was any single individual  
20 responsible. I think we all discussed it. We all had many  
21 meetings and discussions about it. Everybody -- the number of  
22 people in this list spoke about it, including the lawyers.  
23 And I don't remember any one person being assigned to -- to be  
24 the person. We literally all talked about it.

25 **Q.** I -- I didn't ask who's the one person.

1       **A.** Uh-huh.

2       **Q.** At Apple people have specific job responsibilities. There  
3       are people who have finance jobs, people who have  
4       design-related jobs, people who are in the legal function,  
5       right?

6       **A.** Yes.

7       **Q.** All right. So are you able to tell who, looking at the  
8       list, would be responsible for making a -- excuse me -- would  
9       be responsible for contributing to slide presentations for you  
10      on the commission?

11      **A.** In terms of this project and these slides, a number of  
12      people on the list may have worked on it. I can't be explicit  
13      because --

14               **THE COURT:** Do we need to go through every single one  
15      of these people for you to tell me what their primary  
16      responsibility is and why they're on the list to attend this  
17      meeting? Is that what we need to do to get a straight answer,  
18      Mr. Schiller?

19               **THE WITNESS:** I'm not trying to be evasive, Your  
20      Honor. I'm sorry. A number of --

21               **THE COURT:** But you are being --

22                               (Simultaneous colloquy.)

23               **THE WITNESS:** I was about to read some names.

24               **THE COURT:** Okay, give me some names, please.

25               **THE WITNESS:** Certainly.

1 Matt Fischer worked on it more than I did because the  
2 people who worked on it from our team reported up to him.

3 Mr. Oliver, Carson Oliver, works for Matt Fischer, and he  
4 had some role in this. And people on his team worked on it.

5 Alex Roman, who you've talked to in here, had a role in  
6 it, and people on his team had a role on it.

7 Let's see. Who else? I believe Timothy Kimmert  
8 [phonetic] -- we call him Timo Kim [phonetic] -- worked on it  
9 as discussed.

10 Other than that, there it the lawyers who worked on it as  
11 well. But from -- from our team, I think those names  
12 certainly are names I recall working on it at some level.

13 **BY MR. BORNSTEIN:**

14 **Q.** Okay. And we'll meet Mr. Vij later. He's someone who is  
15 involved in contributing to decisions about the commission,  
16 correct?

17 **A.** Yes. Kunnal Vij as well.

18 **Q.** And Mr. Barton as well, who's in the finance function at  
19 Apple, correct?

20 **A.** Yes. From the finance team, Mr. Barton as well, yes.

21 **Q.** Okay. And we'll come and we'll talk later about some of  
22 the design people. We don't need to do that now.

23 **A.** Okay.

24 **Q.** Let's move from this June 1 meeting that we were on that  
25 you attended with Mr. Cook.

1 Do you recall about three weeks later there was a meeting  
2 again that Mr. Cook attended on June 20?

3 **A.** I don't recall specifically.

4 **Q.** All right. Let's take a look at Exhibit 489, please.

5 (Off-the-record discussion.)

6 **THE COURT:** You can just move the mic away a tad.

7 Thank you.

8 **MR. BORNSTEIN:** Just let me know if I'm causing  
9 trouble.

10 **Q.** Do you have Exhibit 489, Mr. Schiller?

11 **A.** Yes, I do.

12 **Q.** All right. And if you look, Exhibit 489 has at the -- the  
13 very back on .2, a calendar invite labeled Epic Injunction  
14 Scheduled for June 20, 2023. And there's a list of people  
15 including yourself and Mr. Cook.

16 Do you see that?

17 **A.** I do.

18 **Q.** Okay. And if you -- do you recall having a meeting with  
19 Mr. Cook where there was on the agenda the question of whether  
20 or not Apple should charge a commission?

21 **A.** No, I don't recall that being on the agenda. I recall a  
22 meeting in this time, around the June time, about our  
23 compliance work. I don't recall that being specifically on  
24 the agenda.

25 **Q.** All right. I don't mean to get caught up on the use of a

1 formal agenda. Do you remember that in the second half of  
2 June of 2023, you had a meeting with Mr. Cook and others where  
3 you discussed and made decisions on whether or not Apple would  
4 charge a commission?

5 **A.** I recall a meeting in June. And so whether there were one  
6 or two, I don't recall whether it was the first half or second  
7 half of June. I'm sorry. I don't recall.

8 But there was a meeting. I believe in that meeting we  
9 talked about the plans, and that included a discussion about  
10 commission. But I don't believe it was a decision, it was a  
11 discussion.

12 **Q.** Right. Let's -- let's see if we can work our way through  
13 this.

14 **MR. BORNSTEIN:** If you turn, please --

15 And if I -- sorry. If I didn't move the last exhibit into  
16 evidence, Your Honor, I would like to do so.

17 **THE COURT:** Any objection?

18 **MR. PERRY:** No objection to 489, Your Honor.

19 **MR. BORNSTEIN:** Yes, thank you.

20 **THE COURT:** Admitted.

21 (Exhibit 489 received in evidence.)

22 **BY MR. BORNSTEIN:**

23 **Q.** Can I ask you to look, sir, at Exhibit 223.

24 **MR. BORNSTEIN:** And so the record is clear, all of  
25 these exhibits we're using today have CX prefixes. If I fail

1 to mention them, that's on me.

2 Q. Do you have CX223, Mr. Schiller?

3 A. Yes, I do.

4 Q. All right. And CX223 is an email from someone named Shawn  
5 Cameron at Apple dated June 16, 2023, that goes to a large  
6 group of people including yourself, correct?

7 A. Yes.

8 Q. And in the CC line are an even larger group of people  
9 including lawyers and even outside counsel, correct?

10 A. Yes.

11 MR. BORNSTEIN: All right. Your Honor, I'd move the  
12 admission of Exhibit 223?

13 MR. PERRY: No objection, Your Honor.

14 THE COURT: It's admitted.

15 (Exhibit 223 received in evidence.)

16 (Exhibit published.)

17 BY MR. BORNSTEIN:

18 Q. Okay. And in Exhibit 223, Mr. Cameron writes to you and  
19 these others listed here, "As discussed in our prior meeting,  
20 there are multiple Epic injunction compliance options under  
21 consideration." Right?

22 A. Yes.

23 Q. And he says that the cross-functional team needs  
24 directional guidance early next week in order to comply with  
25 the July 5th deadline, right?

1 A. I see that.

2 Q. Okay. And do you recall that at this point in June of  
3 2023, Apple was doing work on the injunction response plan in  
4 case it needed to launch the entitlement program on July 5?

5 A. Yes, I recall that.

6 Q. Okay. And that wound up getting postponed because there  
7 was another stay that was granted pending Supreme Court  
8 review, correct?

9 A. I don't recall the exact legal process then.

10 Q. All right. Let me -- let me be one level less specific.  
11 You recall that the -- the go-live date got postponed because  
12 of some legal order?

13 A. I believe so.

14 Q. Okay. But at the time here in June, Apple was working  
15 towards a July 5 -- a potential July 5 launch, correct?

16 A. I believe so.

17 Q. All right. And if you skip a few lines down in  
18 Mr. Cameron's email, he says, "We have a 30-minute review with  
19 Tim on Tuesday at 1:00 p.m. to discuss a no-commission option  
20 and several proposals for a commission option. The objective  
21 of the meeting is to get to a decision on whether to pursue a  
22 commission so the team can do the necessary work to go live in  
23 two weeks' time."

24 Correct?

25 A. Yes.

1 Q. Okay. And so at this point in time, you are -- Apple is  
2 two weeks away from the potential launch, and it was still an  
3 open question as to whether or not Apple would charge a  
4 commission on the purchase links, correct?

5 A. Yes.

6 Q. And headed into this meeting, you, Mr. Schiller, you  
7 favored not charging a commission, correct?

8 A. Again, "favor" isn't the word I would have used, but it  
9 was certainly a consideration at the time that that was a view  
10 I had, yes.

11 Q. Okay. Let me just make sure I have a more direct answer,  
12 Mr. Schiller.

13 A. Apologize. Yeah.

14 Q. Your view at the time was that the best course of action  
15 for Apple was not to charge a commission on external  
16 purchase -- purchases made through an external link under this  
17 program; is that right?

18 A. I'm trying to think of what my view was at the time, how I  
19 thought of that. I'm pausing 'cause I want to be accurate. I  
20 don't want to misstate up here what I thought.

21 I -- I was thinking back then about what was required by  
22 the Court's injunction and whether we could charge a  
23 commission or not.

24 And I had a question of whether we would be able to charge  
25 a commission. It wasn't a view of what I wanted or not

1 wanted. It was what was allowed under the injunction. Yes.

2 Q. All right. So your position at the time, what you stated  
3 to your colleagues out loud or in writing in June of 2023, was  
4 that you were concerned that if Apple charged a commission, it  
5 would run afoul of the injunction, correct?

6 A. I had that concern.

7 Q. Okay. And you communicated that concern to your  
8 colleagues at Apple?

9 A. Yes.

10 Q. Okay. Now, Mr. Cameron, he says further in his email that  
11 this deck has complete details on design, financial modeling,  
12 and risk benefit analysis for the commission and no-commission  
13 options. Right?

14 A. Yes.

15 Q. And attached to his email is a deck that is a draft  
16 that -- of a deck to be used with Mr. Cook at this meeting on  
17 June 20, correct?

18 A. Correct.

19 Q. And he's sharing this with you and some of your colleagues  
20 for your review and comment, right?

21 A. I believe so.

22 Q. And so let's take a look at the deck itself which starts  
23 on CX223.4. It's titled "Epic Injunction Implementation  
24 Proposal."

25 Do you see that?

1 A. Yes.

2 Q. And on the bottom left corner, it says "Privileged and  
3 confidential. Prepared at the request of outside counsel."

4 Do you see that?

5 A. Yes.

6 Q. All right. Let's turn to 223.6 which is titled  
7 "Compliance Options."

8 And this slide lays out two options. Do you see that?  
9 "No fee" and "fee"?

10 A. Yes.

11 Q. And these are at least generally similar to the two  
12 proposals that we saw on the May 18 deck, Exhibit 272,  
13 correct?

14 A. As you say, generally, not the -- not exactly the same.

15 Q. I agree.

16 On the left, option number 1, there is a proposal that has  
17 no fee but has more stringent restrictions on style and  
18 placement, correct?

19 A. Yes.

20 Q. And on the right, option 2, there's either a commission or  
21 a flat fee proposed but less restrictive provisions regarding  
22 the style and placement of links, correct?

23 A. Yes.

24 Q. All right. Now just to get them out of the way, on the  
25 bottom, there's -- there are columns that say "language" and

1 "discouragement," and these are the same as between option 1  
2 and option 2, right?

3 A. Yes.

4 Q. All right. So let's just take a look at what Apple was  
5 contemplating at the time for those regardless of which option  
6 it -- it shows.

7 MR. BORNSTEIN: If we go to 223.7, please.

8 (Exhibit published to witness, counsel, and the Court.)

9 BY MR. BORNSTEIN:

10 Q. It says option 1 and 2 proposed sheet. Right?

11 A. Yes.

12 Q. And this sheet, the image in the middle of the slide is  
13 the full-screen warning that, at least at the time, was under  
14 contemplation to be shown to users when they clicked on a  
15 link, correct?

16 A. Yes.

17 Q. And this full-screen warning would be done regardless of  
18 which option was ultimately selected, right?

19 A. Yes.

20 Q. And although the details, the specific text has changed  
21 some since June of 2023, this concept of a full-screen warning  
22 is what Apple actually implemented in January of 2024,  
23 correct?

24 A. Yes. And also I would just add, if I may, that the  
25 intention of this at the time, I believe, was about the flow,

1 not the details of the individual words or implementation.  
2 That wasn't the time we would be reviewing language to the  
3 extreme detail.

4 Q. Right. You worked out the language subsequently, in other  
5 words?

6 A. Some of it, yes.

7 Q. Great.

8 Well, let's look at the next page, 223.8.

9 (Exhibit published to witness, counsel, and the Court.)

10 **BY MR. BORNSTEIN:**

11 Q. This is the other thing that is contemplated to be the  
12 same in both options, and we see here a limited set of  
13 templates that developers would be permitted to use for their  
14 purchase links, correct?

15 A. Yes.

16 Q. And here, too, there has been some evolution between June  
17 and what ultimately got launched, but at least generally,  
18 these kinds of templates are where Apple ultimately landed in  
19 the final entitlement program, correct?

20 A. Yes.

21 Q. All right. So let's go back to 223.6 and examine the  
22 issues that differed between option 1 and option 2.

23 (Exhibit published to witness, counsel, and the Court.)

24 **BY MR. BORNSTEIN:**

25 Q. So to be specific, an option 1, the no-fee option, the

1 style would limit developers to using a plain link or button,  
2 correct?

3 A. Yes.

4 Q. And that's what Apple ultimately landed on in January of  
5 2024, correct?

6 A. Yes.

7 Q. But at the time, in the presentation for Mr. Cook, or this  
8 draft presentation for Mr. Cook, for the June 20 meeting, it  
9 was contemplated in option 2 that if Apple charged a  
10 commission, it would have given developers more freedom about  
11 how to design their own link or button, correct?

12 A. I don't recall us linking these two styles specifically to  
13 the discussion of fee or no fee. I recall us discussing them  
14 independently as what was the right thing to do and what's  
15 allowed to do.

16 You're making them sound like that they were a set that  
17 could only be considered one way or the other, and I don't  
18 recall the discussion being that way.

19 Q. Okay. We'll -- we'll come to slides on that, but can we  
20 agree that's how it's presented here --

21 A. Yes.

22 Q. -- in the deck?

23 A. Yes, it is.

24 Q. All right. And so your testimony is although the options  
25 were presented as a set, ultimately when you got into the room

1 with each other, you just took them one by one?

2 **A.** My recollection is the discussions were independent, not  
3 connected.

4 **Q.** All right. We'll -- we'll come to that some more.

5 But just so it's clear, what was on the slide for Mr. Cook  
6 on placement, again, option 1, the no-commission option,  
7 required that the link not be on the same page as Apple IAP  
8 buy flow, right?

9 **A.** Yes.

10 **Q.** But it was contemplated under option 2 if a commission or  
11 fee were charged, that that restriction would not be imposed,  
12 correct?

13 **A.** Yes.

14 **Q.** And where Apple ultimately landed in January of 2024 was  
15 to take the more restrictive portion of each of these two  
16 options. It charged a commission from option 2 and it imposed  
17 the more restrictive provisions from option 1, correct?

18 **A.** Yes.

19 **Q.** All right. Now in thinking about the pros and the cons of  
20 these various options, let's turn to 223.16.

21 (Exhibit published to witness, counsel, and the Court.)

22 **BY MR. BORNSTEIN:**

23 **Q.** This is a slide focused on option 1 talking about  
24 considerations. And it identifies benefits and risks, right?

25 **A.** Yes.

1 Q. And under option 1, under benefits, one of the benefits  
2 identified is [REDACTED]

3 [REDACTED] That was a benefit identified to the  
4 no-commission option, correct?

5 A. Yes.

6 Q. And on the other hand, on the bottom right of this slide,  
7 one of the risks is [REDACTED]

8 [REDACTED]?

9 A. Yes, I see that.

10 Q. And again, what Apple chose, [REDACTED]  
11 [REDACTED] was to charge a commission [REDACTED]  
12 undertaking that compliance risk and to impose the restrictive  
13 policies for the external placement [REDACTED]

14 [REDACTED] correct?

15 A. No. I -- I recall in the meeting with Mr. Cook, it was a  
16 discussion with the legal team. And again I'm uncomfortable  
17 in what I can say or not say about these topics. And so when  
18 you talk about the decision with Mr. Cook, it wasn't discussed  
19 in the way you're discussing it.

20 There was a very different discussion about the legal  
21 requirements of the order and what can and can't be done.

22 And so I would not frame it the way you're saying from  
23 these slides as if that was the discussion in the meeting with  
24 Mr. Cook.

25 Q. Well, let's set aside what the discussion in the room was.

1 The slide that was here -- there's a draft and there's a final  
2 we'll look at. The slides that were presented to him that you  
3 commented on, they presented a column A and a column B, a  
4 benefits and a risks, a proposal 1 and a proposal 2.

5 Apple chose to take the worst of column A and the worst of  
6 column B. [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9 A. That's a long statement. I can't say yes to all of that.

10 Q. I'll make it shorter.

11 A. We certainly --

12 Q. I'll save you. I'll make it shorter.

13 Apple ultimately chose to [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 A. Yes.

17 Q. Okay. So let's look at the specifics of the commission  
18 itself discussed in this deck and turn to 223.23.

19 (Exhibit published to witness, counsel, and the Court.)

20 BY MR. BORNSTEIN:

21 Q. And there are three fee options listed on this slide,  
22 correct?

23 A. I see that, yes.

24 Q. And you saw this slide and you ultimately provided some  
25 comments on these options, right? Do you remember that?

1 A. I don't recall all the discussion around it so...

2 Q. All right. Well, we'll come to that. Let's just nail  
3 down what these different options were that were under  
4 consideration and presented to Mr. Cook.

5 Option A is a 27 percent commission with a 24-hour time  
6 limit, right?

7 A. Yes.

8 Q. And what the 24-hour time limit means is that Apple would  
9 have a commission payable of 27 percent on purchases made on a  
10 developer's website within 24 hours of a link being clicked,  
11 right?

12 A. Yes.

13 Q. Okay. Option B proposed a flat fee for each linkout,  
14 correct?

15 A. Yes.

16 Q. And that just means there'd be some number, some dollar  
17 number, that would be required to be paid on each purchase  
18 made through a linkout, right?

19 A. Yes.

20 Q. And Option C was a 20 percent commission but with a  
21 tracking period of a full year, correct?

22 A. Yes. But just to be clear, as I remember this, I believe  
23 these three options, you're presenting them as if these were  
24 what the team presenting were recommending we do. I don't  
25 recall it being that.

1 I recall these were three options in order to go and  
2 create models behind each one as sample analysis, not as  
3 saying the commission must be 27 percent and a 24-hour limit.  
4 That's our proposal.

5 There -- there are many variables, as you know, involved  
6 in this analysis, and these were three they picked to show  
7 three different versions so they then can do the analysis.  
8 They were not recommendations of final decisions. These were  
9 analysis options, samples.

10 Q. I -- I appreciate that. I appreciate the clarification.  
11 And we're going to get to the actual recommendation a little  
12 bit later. But so that we have it clear, these are three  
13 different straw men essentially that were put out so people  
14 could talk about them and understand the consequences; is that  
15 fair?

16 A. Yes.

17 Q. Okay. Now, you, Mr. Schiller, you thought options B and C  
18 were crazy, right?

19 A. Yes.

20 Q. Okay. So let's -- let's focus on Option A. Option A has  
21 considerations identified in the slide on 223.32.

22 (Exhibit published to witness, counsel, and the Court.)

23 BY MR. BORNSTEIN:

24 Q. And here we have the benefits and the risks of the  
25 27 percent commission with the 24-hour tracking period.

1 One of the benefits identified is that this charging a  
2 commission reduces the financial risk versus the no-fee  
3 option, right?

4 **A.** I see that it says that, yes.

5 **Q.** Okay. We just lost the screen.

6 **MR. BORNSTEIN:** Your Honor, I can keep going with the  
7 paper or we can wait, whatever you prefer.

8 **THE COURT:** Well, I'm using paper.

9 **MR. BORNSTEIN:** Okay.

10 Oh. And it's back. All right.

11 **Q.** And now on the right side of this slide, Mr. Schiller, we  
12 have identified the risks of the 27 percent commission. And  
13 the first one is [REDACTED]

14 [REDACTED]

15 Do you see that?

16 **A.** I do.

17 **Q.** Okay. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 **A.** [REDACTED]

21 **Q.** [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 **A.** I'm not going to say what they were thinking when they

1 wrote this. I don't know exactly why that is.

2 Q. All right.

3 A. So I'm not going to say.

4 Q. Well, let me back up and keep it with you. You were  
5 concerned, as you've already said, that there was a compliance  
6 risk from charging a commission.

7 A. It was one of my concerns, yes.

8 Q. Okay. And Apple was -- also noted in the second bullet  
9 that developers may claim that a small discount on initial  
10 transaction does not allow for price competition, correct?

11 A. Yes.

12 Q. All right. And so the team at Apple, at this point,  
13 whoever put the slide together, Mr. Cameron and others, that  
14 shared it with [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 A. [REDACTED]

18 Q. And what Apple ultimately chose was that 27 percent  
19 commission but a full seven-day tracking window, right?

20 A. Yes.

21 THE COURT: What page is that again?

22 MR. BORNSTEIN: That's 223.32, Your Honor.

23 THE COURT: Thank you.

24 BY MR. BORNSTEIN:

25 Q. So let's talk about briefly, because I know you thought it

1 was crazy, but let's talk about option B on 223.37.

2 (Exhibit published to witness, counsel, and the Court.)

3 **BY MR. BORNSTEIN:**

4 **Q.** This is the one that relates to a flat fee charged each  
5 time a customer links out. And here, on the benefits, the  
6 first one, again it reduces financial risk, right?

7 **A.** Yes.

8 **Q.** Okay. I want to talk about the bottom one. It says,  
9 "Sidesteps direct comparisons with commission rates."

10 Do you see that?

11 **A.** Yes.

12 **Q.** Do you have an understanding, Mr. Schiller, about why  
13 sidestepping direct comparisons with commission rates was  
14 considered a benefit of charging a flat fee?

15 **A.** I think simply that it isn't a commission rate. I think  
16 there's been a lot of press and talk always about the  
17 commission rate, the commission rate. And so this doesn't  
18 have a commission rate.

19 **Q.** Well, you were concerned, Mr. Schiller, that if a  
20 commission were charged as a percentage, it would lead to  
21 questions about which services Apple was charging for and it  
22 would lead to people questioning how to break down and  
23 disaggregate your commission, right?

24 **A.** I don't recall if that's what something I was thinking  
25 about in relation to this, no. I don't recall that.

1 Q. Do you have that concern about charging a reduced  
2 commission, sir?

3 A. Not where -- as we've come to do the reduction is  
4 specifically about payment processing and the ability to  
5 identify what that means and what that costs to operate. I  
6 think that's become something that's very clear and easy to at  
7 least discuss and understand.

8 I think as you get further beyond that, it gets  
9 complicated in terms of trying to disaggregate every single  
10 thing Apple provides.

11 Q. And so what you mean by that answer, if I understand you  
12 correctly, is the three, and in some instances and some  
13 countries --

14 THE COURT: Hold on.

15 (Discussion off the record.)

16 THE COURT: Try it again.

17 We're going to take a break in about five minutes.

18 MR. BORNSTEIN: Okay.

19 Q. What you're referring to in the answer you just gave,  
20 Mr. Schiller, is there's a 3 percent discount here in the  
21 U.S., a 4 percent in some countries for alternative payment  
22 options, and you're saying that's now become clear as kind of  
23 a measure of the value of what Apple is providing for payment,  
24 right?

25 A. In the costs in the industry in general, yes.

1 Q. Okay. Great.

2 If you look over on the right-hand side of this slide,  
3 .37, one of the risks identified [REDACTED]

4 [REDACTED]  
5 [REDACTED]  
6 A. [REDACTED]

7 Q. [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 A. [REDACTED]

11 Q. All right. Let's turn to option 2C. It's on 223.42.  
12 (Exhibit published to witness, counsel, and the Court.)

13 BY MR. BORNSTEIN:

14 Q. This, as a reminder, is the 20 percent commission with a  
15 one-year tracking period. Are you with me on .42?

16 A. Yes.

17 Q. And here one of the risks that is identified is [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 A. [REDACTED]

21 Q. [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 A. [REDACTED]

2 Q. [REDACTED]

3 [REDACTED]

4 A. [REDACTED]

5 Q. Okay.

6 I want to do a little digression here, and hopefully we  
7 can finish before the Court wants to take a break.

8 MR. BORNSTEIN: And if not, Your Honor, please stop  
9 me.

10 Q. But if you turn to 223.28, this is back on the 27 percent  
11 commission, the 24-hour tracking window. Let me know when  
12 you're there.

13 A. I'm on that page, I think.

14 Q. All right. I just want to make the record clear on how  
15 this would work.

16 So on the top, it says non-sub IAP. And that means  
17 nonsubscription; is that right?

18 A. Yes.

19 Q. Okay. So for a nonsubscription app, the way it works is  
20 that if there's a paid transaction that happens within  
21 24 hours after a user clicks on the link, there would be a  
22 commission that's payable. And that's what that green dot is  
23 for, right?

24 A. Yes.

25 Q. Okay. And then subsequent transactions that a user makes

1 outside the window that are done directly on the developer's  
2 website, those would not be subject to a commission, correct?

3 **A.** Correct.

4 **Q.** But if the user were to reach the developer's website a  
5 second time by going through the external purchase link on an  
6 app on the iPhone, the 24-hour window would restart and there  
7 would be commissions payable during that 24-hour window,  
8 correct?

9 **A.** Yes.

10 **Q.** And that's exactly how the entitlement program works as  
11 actually launched except the tracking window is seven days  
12 instead of 24 hours, right?

13 **A.** Yes.

14 **Q.** Okay. And then for subscription apps on the bottom, if a  
15 user signs up after clicking the link, user signs up on the  
16 developer's website for a free trial within the 24-hour window  
17 here or the seven-day window in the real world, there's no  
18 commission payable because it's a free trial. So there's no  
19 commission to be paid, right?

20 **A.** Yes.

21 **Q.** But if there is a paid start to the subscription because  
22 the free trial expires, there'd be a commission payable to  
23 Apple even if that free trial expired and the free start  
24 happened after the end of the tracking window, right?

25 **A.** I'm sorry. I lost that halfway through. I think I know

1 what you're --

2 Q. Well --

3 A. But could you please repeat it to me?

4 Q. -- sure. If the screen would stay up, I can do it from  
5 the screen. Or maybe you have the hard copy in front of you?

6 A. I do.

7 Q. Okay. Great. So we can look at the hard copy.

8 But if you -- if you see, first there's a 24-hour tracking  
9 window which has free trial and a black dot, right?

10 A. Yes.

11 Q. So that's obviously no commission because there's no money  
12 being exchanged with the developer, right?

13 A. Yes.

14 Q. And at some point, with a lot of apps the free trials  
15 expire and there's an automatic or sometimes optional renewal  
16 at which point you start paying the developer for your  
17 subscription, right?

18 A. Yes.

19 Q. And if you have a 24-hour tracking window, that renewal  
20 period, the expiration of the free trial is likely to happen  
21 after 24 hours, right?

22 A. It may.

23 Q. Free trials are often, you know, a week, 30 days, it  
24 depends on the developer's choice, right?

25 A. That's right.

1 Q. So let's just say we have a 30-day free trial. When the  
2 30 days are up, if the subscription automatically renews or  
3 there's a paid start and all of a sudden the user now has to  
4 pay for the next 30 days, Apple would have a commission  
5 payable at that point, correct?

6 A. Correct.

7 Q. And that's regardless of whether the commission -- excuse  
8 me -- whether the subscription starts in a paid basis after  
9 the tracking window has expired, as illustrated here --

10 (Simultaneous colloquy.)

11 **THE WITNESS:** Complicated way.

12 Could I say, as I understand it, a little simpler way?

13 **BY MR. BORNSTEIN:**

14 Q. I bet you can.

15 A. Whenever the free trial ends, that's the beginning of the  
16 tracking window. And that tracking window is the same as if  
17 it wasn't a subscription. If it's 24 hours or seven days,  
18 whatever the tracking window is, that tracking window occurs  
19 when the free trial ends.

20 So in this case of the 24-hour tracking window, at the end  
21 of the free trial, if the paid subscription begins in less  
22 than 24 hours, then there's a commission. If the user doesn't  
23 automatically opt in, let's say they opt in two days later,  
24 there isn't a commission because it's outside the tracking  
25 window. But the tracking window period is immediately

1 subsequent to the free trial.

2 Does that make sense or not?

3 Q. Well, I understand you. I'm not sure it's consistent with  
4 the slide, and so I just want to make sure that we have the  
5 facts correct.

6 Let me give you a hypothetical situation if I could. And  
7 we'll put it in the real world of the seven-day tracking  
8 window.

9 A. Okay.

10 Q. Let's suppose I click on a link for a subscription app. I  
11 get to the developer's website and I sign up for a free trial  
12 and I do that, you know, right away within ten minutes. Okay?

13 A. Yes.

14 Q. The free trial that I get is a 30-day free trial. Okay?

15 A. Yes.

16 Q. So when the free trial expires, we're going to be outside  
17 that seven-day tracking window, correct?

18 A. Yes.

19 Q. All right. At that point, if I have my paid start either  
20 because it's automatic or because I click a button to  
21 authorize it, is there a commission payable or not after  
22 those -- the free trial expires after 30 days?

23 A. There is, but my understanding, and I may be incorrect, is  
24 that it is as long as that paid start begins within that same  
25 time period after the end of the free trial.

1 Q. Okay.

2 MR. BORNSTEIN: So, Your Honor, I'm going to move to  
3 a new subject if you want to take a break or have me keep  
4 going?

5 THE COURT: No. Per our schedule we'll take a  
6 20-minute break at this point. So we'll stand in recess until  
7 10:22.

8 MR. BORNSTEIN: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (Recess taken at 10:02 A.M.; proceedings resumed at  
11 10:23 A.M.)

12 THE COURT: Okay. We are back on record. The record  
13 will reflect that the parties are present.

14 Mr. Perry, I see you at the podium. Is there an issue?

15 MR. PERRY: Your Honor, apologies for interrupting  
16 Mr. Bornstein's examination. We may have an issue.

17 Before the break, Mr. Bornstein was asking Mr. Schiller  
18 about CX223, which is the June deck. There are multiple  
19 versions of this deck. I did not object to the introduction.  
20 They have a produced version, I know that.

21 THE COURT: I don't know that your mic is on.

22 Go ahead, Mr. Perry.

23 MR. PERRY: Can you hear me now, Your Honor?

24 THE COURT: Yes.

25 MR. PERRY: The -- there are multiple versions of

1 these documents in the production. Epic declined to provide  
2 an exhibit list before this hearing. So we couldn't check  
3 through their exhibits.

4 There is -- there are other versions of this document in  
5 which the references to compliance risk throughout the  
6 document that Mr. Bornstein questioned Mr. Schiller about --

7 **THE COURT:** So I can't have you coaching the witness.

8 **MR. PERRY:** Oh, I'm sorry, Your Honor.

9 **THE COURT:** I'll take you at sidebar.

10 **MR. PERRY:** Thank you, Your Honor.

11 (Sidebar hearing, not reported.)

12 **THE COURT:** We're back on the record.

13 You may proceed.

14 **MR. BORNSTEIN:** Thank you, Your Honor.

15 **Q.** Mr. Schiller, welcome back.

16 **A.** Hello.

17 **Q.** We had some discussion before the break about your views  
18 on whether or not Apple should charge a commission. Do you  
19 recall that?

20 **A.** Yes.

21 **Q.** Okay. I want you to take a look, if you would, at  
22 Exhibit 224 in your binder.

23 224 is an email string. The top email from Shawn Cameron  
24 at Apple dated June 19, 2023, to you and a number of other  
25 people. Do you see that?

1 A. Yes.

2 Q. And if you go down to the middle of the first -- let me do  
3 the housekeeping here.

4 MR. BORNSTEIN: Your Honor, I'd move the admission of  
5 Exhibit 224.

6 MR. PERRY: No objection, Your Honor.

7 THE COURT: 224 is admitted.

8 (Exhibit 224 received in evidence.)

9 (Exhibit published to witness, counsel, and the Court.)

10 BY MR. BORNSTEIN:

11 Q. If you go down the middle of the first page, Your Honor --  
12 excuse me -- Mr. Schiller, there is an email from you dated  
13 June 16, 2023, which you have labeled privileged and  
14 confidential, attorney work product.

15 Do you see that?

16 A. Yes.

17 Q. Okay. And you provide here in this email a set of  
18 comments on a draft presentation, correct?

19 A. Yes.

20 Q. And the draft presentation you're commenting on is the one  
21 we were -- we were just looking at. You can see on the bottom  
22 there's Mr. Cameron's email that we read before the break.

23 Do you see that?

24 A. Yes.

25 Q. Okay. And your first line here after thanking Mr. Cameron

1 for the draft, you say, "Here are my notes. Clearly I am not  
2 on team commission/fee so no surprises here."

3 Do you see that?

4 **A.** Yes.

5 **Q.** And that's a reference to the fact that you were not in  
6 favor of charging a commission at this point in time, correct?

7 **A.** Again, I wasn't in favor or not. It was a discussion  
8 about what we're allowed to do or not allowed to do. Not  
9 about favor, what I favor.

10 **Q.** All right. Again your view was that you were not allowed  
11 to charge a commission or that there were compliance risks  
12 associated with it, correct?

13 **A.** I had concerns with that.

14 **Q.** All right. And in fact, you -- as you say later in the  
15 email, you had already explained your many issues with the  
16 commission concept to your colleagues, correct?

17 **A.** Yes.

18 **Q.** So you had other issues besides just the compliance risk  
19 with charging the commission, correct?

20 **A.** Yes.

21 **Q.** Okay. What were your other concerns about charging a  
22 commission?

23 **A.** Oh, a few. I have had concerns throughout this process  
24 about collection risk, that developers may or may not pay that  
25 and how we deal with that. The App Store has always been a

1 business where we pay the developer proceeds and retain our  
2 commission. And now in this model, we have to go ask the  
3 developer to report to us and then pay us for that.

4 So I was concerned with what happens if a developer  
5 doesn't pay and what's the process for that. And the  
6 antagonistic relationship it creates between Apple and  
7 developers over payment of fees or not.

8 And ultimately do we need to have audit rights to go check  
9 the developers to decide whether they owed us money or didn't  
10 and how would we do that.

11 So I had many concerns.

12 Q. And ultimately, despite all those concerns -- which I  
13 presume you expressed to your colleagues, correct?

14 A. I believe so.

15 Q. Yeah. So despite all those concerns that you expressed to  
16 your colleagues, Apple nevertheless made the decision to go  
17 ahead and charge a commission on the external purchases made  
18 through the link implemented in response to this Court's  
19 injunction, correct?

20 A. Yes.

21 Q. All right. Who made that decision? Which person at Apple  
22 ultimately decided to charge a commission?

23 A. Ultimately it was the -- the pricing committee approval  
24 that we've already talked about at length, yes.

25 Q. So that would be Mr. Cook, Mr. Maestri, and yourself made

1 the final decision?

2 **A.** Yes, again with a lot of legal counsel involved in that  
3 same discussion, yes.

4 **Q.** All right. But you had concerns about doing it and  
5 effectively got overruled or outvoted by others?

6 **A.** No, I wouldn't describe it that way.

7 **Q.** All right. So you eventually came around and were part of  
8 the consensus in favor of charging a commission?

9 **A.** Again, that all is about the discussion we had with the  
10 legal counsel about what the injunction says and what we are  
11 allowed or not allowed to do. And so it was about a legal  
12 discussion.

13 **Q.** Okay. Well, let me -- we'll -- we'll come back to that a  
14 little bit later.

15 You asked a little later in this slide, the next sentence,  
16 Mr. Cameron, whether there's a 12 percent commission on a  
17 small business developer transaction, otherwise this is an  
18 increase in commission level for 95 percent of developers.  
19 Right? You posed that question to him?

20 **A.** Yes.

21 **Q.** And what you're referring to there is the fact that  
22 developers in Apple's small business program ordinarily pay a  
23 15 percent commission rather than 30 percent, correct?

24 **A.** Yes.

25 **Q.** And you asked whether there was a 12 percent commission,

1 and you got to 12 percent by effectively subtracting 3 from  
2 the 15 the same way that the 27 is a deduction of 3 from the  
3 standard fee of 30, correct?

4 **A.** Well, as we've discussed previously, we arrived at those  
5 numbers both looking at it from the deduction side, but also  
6 from the bottoms-up side as well in terms of the value of the  
7 goods provided. And so there were both discussions that went  
8 on ultimately. But the 12 percent is in fact 15 minus 3 is  
9 certainly one of the ways we derived it.

10 **Q.** Right. And in your email when you wrote 12 percent, you  
11 hadn't done that bottoms-up analysis yet, had you?

12 **A.** Well, we had already had discussions about that, yes.

13 **Q.** And it's your testimony that the bottoms-up analysis leads  
14 to 12 percent for small developers but leads to 27 percent for  
15 developers who just happen to cross the million dollar  
16 threshold in revenue?

17 **A.** No, of course not.

18 **Q.** Okay.

19 **A.** It was the justification that the value was there at both  
20 of those commissions based on the analysis that had been done  
21 externally.

22 **Q.** All right. When you refer here to 95 percent of  
23 developers, to be clear you don't mean 95 percent of revenue  
24 that participates in the small business program. You mean  
25 95 percent of developers on a sort of one-by-one basis, right?

1 A. I'm talking about a round number for all the developers  
2 eligible for the small business program is roughly 95 percent.

3 Q. Right, but that's not 95 percent of revenue that Apple  
4 earns from the App Store, correct?

5 A. Correct. That's the number of developers, yes.

6 Q. The actual revenue attributed to those developers is far,  
7 far less than 95 percent, right?

8 A. Yes.

9 Q. Now, ultimately in the purchase link entitlement program,  
10 Apple did include a 12 percent commission rather than a  
11 27 percent commission for developers in the small business  
12 program, right?

13 A. Yes.

14 Q. Okay. But there are other programs that Apple offers that  
15 come with a reduced commission besides the small business  
16 program, correct?

17 A. Yes.

18 Q. There's the video partner program, the news partner  
19 program, right?

20 A. Yes.

21 Q. And in the actual purchase link entitlement program,  
22 those -- those programs are excluded from eligibility, as we  
23 saw in May, correct?

24 A. Yes.

25 Q. And so for those developers, adopting an external link

1 would in fact involve an increase in commission level,  
2 correct?

3 **A.** If they chose that, yes.

4 **Q.** All right. Now Mr. Cameron responds to you here at the  
5 top of the page by thanking you for your comments and thanking  
6 others and attaching a revised version of the deck for use  
7 with Mr. Cook, correct?

8 **A.** I see that.

9 **Q.** All right. So let's turn to the deck that's attached.  
10 It's at 224.4.

11 (Exhibit published to witness, counsel, and the Court.)

12 **BY MR. BORNSTEIN:**

13 **Q.** This is titled Epic Injunction Implementation Proposal,  
14 and this too is labeled privileged and confidential, prepared  
15 at the request of outside counsel, correct?

16 **A.** I see that, yes.

17 **Q.** All right. Turn to 224.6, please.

18 And here in the -- now we have speakers notes that are  
19 attached to the slide, right? That's what's on the bottom?

20 **A.** I believe so.

21 **Q.** Okay. And here, in 224.6 we have the same option 1,  
22 option 2, no fee, fee, options that were in Exhibit 223 that  
23 we looked at before the break, correct?

24 **A.** I assume they're the same. I don't know. I haven't done  
25 a side-by-side comparison.

1 Q. All right. They're -- generally speaking there is a  
2 no-fee option on the left with more restrictive style and  
3 placement provisions and a commission or fee option on the  
4 right with less restrictive style and placement options,  
5 correct?

6 A. Yes.

7 Q. And the speaker's notes from Mr. Oliver actually make that  
8 point down at the bottom, the two options also diverge when it  
9 comes to the placement and the style of the link, right?

10 A. I see that.

11 Q. All right. So go, please, to 224.9. And here we have  
12 notes from somebody named Shawn.

13 This is Shawn Cameron, correct?

14 A. Yes.

15 Q. All right. And Mr. Cameron makes the point or is -- his  
16 speaker notes for this presentation to Mr. Cook make the point  
17 that in the no-fee option, the style placement and fee would  
18 diverge from the fee breaking option. Do you see that?

19 A. I see that.

20 Q. And the fee breaking option is a reference to option 2,  
21 the version that actually has a commission or a fee in it,  
22 right?

23 A. It may. I don't know.

24 Q. Do you know what is meant by the "fee breaking option"  
25 here?

1 A. No, I do not.

2 Q. Do you consider the commission that Apple charges on the  
3 external link entitlement program to break Apple's fee  
4 structure?

5 A. No. I've -- I've not heard that term.

6 Q. Okay. Can you agree with me, however, that in the  
7 presentation, the way it's put here, Mr. Cameron's notes  
8 actually do link the fee option with particular style and  
9 placement restrictions. They are a set as he's slated to talk  
10 about them here, correct?

11 A. It says that here.

12 Q. Okay. And now this deck also -- and -- and that's your  
13 understanding of how the -- the materials were put together to  
14 present to Mr. Cook, right? There were two options with sets,  
15 correct?

16 A. Yes. But, again, my recollection isn't that those -- the  
17 button styles and the fees were directly connected. I don't  
18 recall that being said.

19 Q. Okay. And ultimately, you didn't land with them in that  
20 particular constellation anyway. You mixed and matched,  
21 correct?

22 A. (No audible response.)

23 Q. Okay. And now the deck includes some financial analysis.  
24 If we go -- we're not going to put any numbers on the screen  
25 here, but I'll ask you to look at the hard copy,

1 Exhibit 224.15.

2 (Exhibit published to witness, counsel, and the Court.)

3 **BY MR. BORNSTEIN:**

4 **Q.** We have the speaker notes on the screen. There's nothing  
5 I believe to be confidential there. And the speaker is, it's  
6 labeled Kunnal. And if I'm pronouncing the gentleman's name  
7 wrong, please correct me, but it's Kunnal Vij; is that right?

8 **A.** Yes.

9 **Q.** And he is somebody with a finance role at Apple?

10 **A.** Yes.

11 **Q.** And the notes have Mr. Vij saying that when -- it's at the  
12 bottom -- when a linkout happens, there will be some breakage  
13 meaning customer dropping off during the buy flow process due  
14 to a less seamless experience.

15 You see that?

16 **A.** Yes.

17 **Q.** And what Mr. Vij is referring to is the idea that when  
18 users use a purchase link, some number of them won't make it  
19 all the way through and make the external purchase because the  
20 process is less seamless, has more friction than just using  
21 the IAP function in the app; is that right?

22 **A.** That's one reason. Or they just may not want to.

23 **Q.** Okay. But he's talking about the breakage because of the  
24 less seamless experience, that's the specific phenomenon he's  
25 focusing on here, right?

1     **A.** I don't -- again, I don't read these speaker notes, so I'd  
2     be guessing at what he was thinking.

3             But I certainly understand the concept of breakage.

4     **Q.** Okay. And there's some analysis in the slide which we  
5     don't have on the screen about the impact of breakage on  
6     Slide .16, the next page.

7             And there's an conclusion you can see that's reached in  
8     the second paragraph of the speaker notes that says, "Beyond a  
9     particular blacked-out percentage of developers" -- sorry.  
10    "Beyond a particular blacked-out percentage of breakage,  
11    developers reach a tipping point where they lose more on  
12    linking than they would make sticking with Apple IAP and a  
13    higher commission," correct?

14    **A.** I'm sorry. I'm just trying to find where the point is  
15    where that says this on this slide.

16    **Q.** Sure. It's on the second paragraph of the speaker notes  
17    which begins "on the rose."

18    **A.** Thanks. Yes, I see that.

19    **Q.** Okay. And the reason that there is a breaking point, or  
20    tipping point to use Mr. Vij's words, is that at some point  
21    there's enough breakage that happens that developers don't  
22    make any sale at all and it's better for them just to stay  
23    with IAP and make more sales at a higher -- but pay a higher  
24    commission, correct?

25    **A.** I would say that just slightly differently.

1 This is -- this is a -- a model where the team is plugging  
2 in different breakage numbers, not that they know that will  
3 happen. They're just plugging different numbers to say where  
4 does the model start [sic] working for developers. At what  
5 breakage, if it got that high, it would be less advantageous  
6 to do a linkout versus stay in the app.

7 And so the breakages is -- is the control variable in this  
8 analysis. It's -- it's -- and so, yes, there's a point  
9 where -- I'll give you a ridiculous number. A hundred percent  
10 breakage, why would anyone link out because no one would  
11 follow it and no one would pay and you wouldn't make any  
12 money. So logically there's a cutover point on that breakage  
13 control variable.

14 Q. Right. And I think we're saying the same thing. As usual  
15 you're saying it more precisely and eloquently. But the idea  
16 is that the team was modeling where that tipping point was  
17 where it ceased to be advantageous for developers because of  
18 the amount of breakage, correct?

19 A. Yes.

20 Q. And in the modeling, Mr. Vij and his colleagues come up  
21 with a number, which I won't say out loud, but it's there in  
22 the second paragraph of the slide, correct?

23 A. They are, yeah.

24 Q. Okay. And now there's another variable that Mr. Vij  
25 focused on which is the share of billings that are linked out.

1 And you can see that as linkout share on the -- the graphic  
2 portion of the slide. See it says linkout share in blue?

3 A. Yes, I see that.

4 Q. All right. And he says down below in the third paragraph,  
5 "For the share of billings linking out, we are showing  
6 sensitivities between 10 percent and 50 percent." Correct?

7 A. Yes, he says that.

8 Q. And what he's talking about here, the analysis that Apple  
9 was doing here is to assess at the financial impact to  
10 developers -- or excuse me -- the financial impact to Apple if  
11 the amount of -- or the share of linking out increases or  
12 decreases in a particular app, correct?

13 A. Yes.

14 Q. Right. And the higher the linkout share, the greater the  
15 impact on Apple's -- the greater the adverse impact on Apple's  
16 revenue, correct?

17 A. Yes.

18 Q. And Mr. Vij's speaking notes make the observation that the  
19 share of billings linking out will depend where is the text  
20 and the language that developers are allowed to use.

21 Correct?

22 A. (Reviewing document.)

23 Q. It's in that third paragraph, sir.

24 A. Yes, I see that.

25 Q. All right. So this is people at Apple recognizing that

1 more restrictive rules on the placement and the format and the  
2 language of links can have the effect of reducing the amount  
3 of linkout behavior in which users engage, correct?

4 **A.** Yes.

5 **Q.** And Apple has the ability by making those rules more  
6 restrictive to reduce the amount of linking out and reduce the  
7 adverse impact on Apple's revenue, correct?

8 **A.** In a general sense. It's much more complicated than just  
9 that. But in a general sense.

10 **Q.** Well, it is the case, sir, that the more restrictive the  
11 rules are on placement and format and language of links, the  
12 less likely it is that those links will be seen and used by  
13 users.

14 **A.** Again, there are more variables than that, but those  
15 certainly matter, yes.

16 **Q.** All right.

17 All else equal -- we'll do it that way -- all else equal,  
18 the more restrictive the format rules, the placement rules,  
19 and the language rules are, the less likely a user will be to  
20 select the link and make a purchase outside of the app,  
21 correct?

22 **A.** In theory, yes.

23 **Q.** And --

24 **THE COURT:** Sorry. And I expect that if there is any  
25 other significant consideration, there will be some writing

1 about it, correct? Or you're only -- yeah. I mean, you did  
2 analysis, didn't you?

3 **THE WITNESS:** We did a model to understand what  
4 impact it could have. We didn't analyze whether color or font  
5 size or specific page placement or frequency --

6 **THE COURT:** But this isn't just something in your  
7 head, Mr. Schiller. This is Apple. And if there was a  
8 consideration, we'd find it in writing somewhere.

9 **THE WITNESS:** We -- we did as much work as we could  
10 to analyze everything we could.

11 **THE COURT:** And if it's not there, that means you  
12 didn't analyze it then, right? The absence of it is equally  
13 relevant.

14 **THE WITNESS:** Yes. We also discussed things that  
15 weren't always in the slide deck, other ideas --

16 **THE COURT:** And that was --

17 **THE WITNESS:** -- we cared about.

18 **THE COURT:** And it was never -- if it wasn't followed  
19 up, then obviously it wasn't important. Because if it was  
20 important, some subordinate would have done something with it.

21 **THE WITNESS:** Yes.

22 **THE COURT:** Proceed.

23 **MR. BORNSTEIN:** Thank you, Your Honor.

24 **Q.** And what we do know, just to follow up on the Court's  
25 question, we do know that one of the things that Apple did

1 take into account is what Mr. Vij says here, the more  
2 restrictive the text and the language get, the lower the  
3 linkout share will be, correct?

4 **A.** That was in our model.

5 **Q.** All right. And this was in the slide presentation and  
6 the -- the discussion that was given to Mr. Cook on June 20,  
7 correct?

8 **A.** I do not recall if these words were read in that meeting,  
9 no.

10 **Q.** Okay. But this slide was shown, correct?

11 **A.** I believe so. I, again, don't know what edits were done  
12 to this between this and the final version, but I believe a  
13 version of something like this was shown.

14 **Q.** Okay. Take a look then at Slide .25 of Exhibit 224.

15 (Exhibit published to witness, counsel, and the Court.)

16 **BY MR. BORNSTEIN:**

17 **Q.** Now we have only two fee options for discussion. And  
18 I'll -- I'll ask the question that you might want me to ask,  
19 which is at least at this point in time these are not  
20 recommendations, these are just options for discussion,  
21 correct?

22 **A.** For modeling, yes. Thank you.

23 **Q.** Okay. And we've -- we have jettisoned now the flat fee  
24 option which you thought was crazy, correct?

25 **A.** Yes.

1 Q. So the two options that we have left are the same one --  
2 same two we saw before, the 27 percent commission with a  
3 24-hour time limit, and a 20 percent commission for a full  
4 year, correct?

5 A. Yes.

6 Q. Now here, too, there's some financial analysis of these  
7 options. I want you to look, please, at .30.

8 (Exhibit published to witness, counsel, and the Court.)

9 MR. BORNSTEIN: And we're going to have the numbers  
10 themselves blacked out on the screen.

11 Q. And .30 is an analysis that's done with respect to the  
12 first of those options, the 27 percent commission with -- it  
13 says 24 year, but I assume that's supposed to mean 24-hour  
14 tracking window, correct?

15 A. I would assume so as well.

16 Q. I hope so. Otherwise we're having a different discussion.  
17 And it notes over on the side on the third bullet, linkout  
18 billings not eligible for program discounts, correct?

19 A. Yes, it does.

20 Q. Okay. And that's a reference to what we talked about  
21 before where, for example, the video partner program, the news  
22 partner program, developers were not eligible under this  
23 construct at least to participate in the external purchase  
24 link entitlement program, correct?

25 A. Yes.

1 Q. All right.

2 Now if we turn to 224.33.

3 (Exhibit published to witness, counsel, and the Court.)

4 **BY MR. BORNSTEIN:**

5 Q. This is a different version of the 27 percent commission  
6 that was under discussion at the -- the June 20 meeting with  
7 Mr. Cook, correct?

8 A. (Reviewing document.)

9 I'm sorry, I don't know. I don't know what the difference  
10 is --

11 Q. Sure.

12 A. -- in these slides.

13 Q. Let me see if I can help you, sir.

14 If you look at Slide 224.32.

15 A. Yes.

16 Q. You see there's something called option 2AV2, means  
17 version 2?

18 A. Yes.

19 Q. And option 2A version 2 has a -- it says 3 percent  
20 commission. I assume from subsequent slides that's supposed  
21 to mean a 3 percent discount -- with a 24-hour time limit  
22 including the program discounts. Do you see that?

23 A. Yes, I do.

24 Q. All right. So option 2A that we looked at back on  
25 Slide .30, the one that had the language about the program

1 partners being excluded, that was just a 27 percent commission  
2 on all transactions and the program partners were not  
3 included, correct?

4 **A.** Yes.

5 **Q.** All right.

6 And version 2 has as 3 percent discount off of whatever  
7 commission is payable by the developer, and the program  
8 partners are eligible to participate, correct?

9 **A.** Yes.

10 **Q.** All right. And it even says, if you look over on the  
11 right on Slide .33, for this 3 percent discount option,  
12 third bullet, linkout billings are eligible for program  
13 discounts, correct?

14 (Exhibit published to witness, counsel, and the Court.)

15 **THE WITNESS:** Yes.

16 **BY MR. BORNSTEIN:**

17 **Q.** And so in this version that was at least being discussed  
18 with Mr. Cook, you would have a 27 percent commission on  
19 standard payments, people who otherwise would pay 30, and  
20 you'd have a 12 percent commission for partners who  
21 participated in the video partner or news partner program,  
22 correct?

23 **A.** Yes.

24 **Q.** All right.

25 And there's some analysis that's done about the revenue

1 impact of these two options. So I want to do this without  
2 saying confidential numbers out loud. So I'll see if I can  
3 try it this way first and hope you'll work with me so we can  
4 maintain the confidentiality of Apple's information.

5 If you look at .30 and you compare that to .33, you'll  
6 see that there are two different calculations of the revenue  
7 impact of these two different versions of the commission.

8 Are you with me so far?

9 **A.** Yes.

10 **Q.** Okay. And without saying any of the numbers out loud, can  
11 we agree that these calculations show that the projected  
12 revenue loss is higher in the second version when the program  
13 partners are permitted to participate in the linkout program?  
14 In other words, Apple loses more revenue under these  
15 projections if the program partners are included.

16 **A.** (Reviewing document.)

17 Yes. However to be specific, in some of the numbers  
18 shown, it's the same. In some, it's less.

19 So it's not absolute, but I'm expecting that's probably  
20 due to rounding differences more than anything.

21 **Q.** Okay. That's -- that's helpful. Now I want to go a  
22 little bit further, and I think this much we can put on the  
23 screen with the numbers blacked out to show you that the  
24 comparison on the face of the slides actually substantially  
25 understates the difference between the two.

1 So if you look at .30 --

2 **MR. BORNSTEIN:** And we can put that one up now with  
3 the redactions.

4 (Exhibit published to witness, counsel, and the Court.)

5 **BY MR. BORNSTEIN:**

6 **Q.** If you look over on the bottom right-hand corner, there is  
7 something that says, "These numbers assume a 30 percent  
8 collection risk that are factored into the sensitivities."

9 Do you see that?

10 **A.** Yes, I do.

11 **Q.** Okay. And this is a reference to, at least conceptually  
12 what you were talking about before, that there might be  
13 collection issues if you charge a commission; that was one of  
14 your concerns?

15 **A.** Yes.

16 **Q.** Okay. So for these numbers on .30 there's a 30 percent  
17 collection risk baked in.

18 If you go to .33, this is the one regarding when the  
19 program partners are eligible.

20 (Exhibit published to witness, counsel, and the Court.)

21 **BY MR. BORNSTEIN:**

22 **Q.** Here there's no collection risk factored in, correct?

23 **A.** I see that.

24 **Q.** So if you did an apples-to-apples, no pun intended --  
25 actually I lied, that was intended -- if you do an

1 apples-to-apples comparison between these two slides, if you  
2 either include collection risk on both or you exclude  
3 collection risk on both, the revenue loss for including the  
4 partners is actually quite a lot larger than the revenue loss  
5 if the partners are excluded, correct?

6 **A.** I would think so. Again, would have to make sure the team  
7 did that correctly, but, yes.

8 **Q.** Okay. And Apple ultimately made the decision to go with  
9 the version that entailed less revenue loss by excluding the  
10 partners from eligibility for the program, correct?

11 **A.** Well, no. We have the largest programs included.

12 **Q.** Right. You excluded the video partner program, correct?

13 **A.** Yes.

14 **Q.** You excluded the news partner program, correct?

15 **A.** Yes.

16 **Q.** You excluded the tenured subscriptions?

17 **A.** No.

18 **Q.** Okay. They're included?

19 **A.** They're included as is the small business program.

20 **Q.** Understood.

21 The 3 percent discount, by the way, on .33, this -- this  
22 makes perfectly clear that what's going on again is it's just  
23 a deduction from the rate that would otherwise be charged to  
24 these developers. You're taking 3 percent off and discounting  
25 it, as the slide says, correct?

1 A. Yes.

2 Q. All right.

3 And in fact, even for option -- the first of these  
4 options, the 27 percent commission option, if you look at  
5 Slide .35, you'll see Slide .35 refers not to the 3 percent  
6 discount version but to the 27 percent commission on  
7 transactions made within 24 hours. Do you see that's part of  
8 the title?

9 A. Yes.

10 Q. And then there are speaker notes here from Carson. That's  
11 Mr. Oliver, right?

12 A. Yes.

13 Q. And Mr. Oliver's speaker notes say in the second bullet,  
14 "We believe using our standard commission rate discounted by  
15 cost of payments in the U.S. is reasonable." Do you see that?

16 A. Yes.

17 Q. And again, that's the logic that was being applied at this  
18 time to get to 27 percent, the standard commission rate and  
19 discount by what was estimated as the cost to payments,  
20 correct?

21 A. Again, both were discussed. Both models looking down --  
22 looking as a deduction down as well as building up, but  
23 clearly the slide talks only about discounting down.

24 Q. Okay. Well, you -- you agree that for Korea and the  
25 Netherlands, move out of the U.S. for a second -- the

1 commission rates that were identified there, 27 and  
2 26 percent, those were done in a top-down way, right?

3 A. Yes.

4 Q. Okay.

5 And you recall when you were here in May, listening to  
6 some of your colleagues testify, they -- at least one of them  
7 testified that the fees in Korea and the Netherlands that were  
8 charged had nothing to do with the fees that Apple ultimately  
9 charged here, right? Do you recall that?

10 A. Correct.

11 Q. Okay.

12 And the testimony here was that it was entirely based on  
13 this bottoms-up analysis, correct?

14 A. Well, again, are you talking about one person's statement  
15 or everything --

16 Q. Well, that's what --

17 (Simultaneous colloquy.)

18 BY MR. BORNSTEIN:

19 Q. -- Mr. Roman said, right?

20 A. Yes. That I recall.

21 Q. Right. And Mr. Roman was wrong about that, in your view.

22 A. I thought differently because I know the project asked the  
23 team to build up from the bottoms as well, yes.

24 Q. Well, Mr. Roman's testimony was it was only a bottoms-up  
25 analysis, wasn't it?

1 A. I believe so.

2 Q. And that was incorrect. There was a also a top-down  
3 component, correct, as reflected in Mr. Oliver's remarks here?

4 A. Again, we worked -- he worked on a different part of it.  
5 I'm not going to say what Mr. Roman's perspective of what he  
6 worked on and what all he did. I was very clear when you  
7 asked me about that previously when we were here in May, that  
8 I looked at it from top down as well as the team did work on  
9 the bottom's up.

10 Q. Okay. Take a look, then, at Exhibit dot -- I'm sorry.  
11 Exhibit 224.69.

12 (Exhibit published to witness, counsel, and the Court.)

13 BY MR. BORNSTEIN:

14 Q. Now here there are speaker notes for somebody named Nate.  
15 Do you see that?

16 A. For Nate, yes.

17 Q. And Nate, we saw his name earlier on the meeting invite.  
18 That's Nate Barton?

19 A. Correct.

20 Q. And Mr. Barton is in the finance function at Apple,  
21 correct?

22 A. Yes.

23 Q. All right. And this slide talks about U.S. revenue  
24 impact. Do you see that on top?

25 A. Yes.

1 Q. And what Mr. Barton's speaker notes say is that "If we  
2 decided and had the ability to charge and enforce a  
3 commission, we believe there would be very little developer  
4 adoption of linkout, assuming a scenario where we would give a  
5 cost of payments discount at 3 percent." Correct?

6 A. Yes.

7 Q. But that's exactly what Apple did. It gave a cost of  
8 payments discount at 3 percent, correct?

9 A. Yes.

10 Q. And if you look at the next paragraph, this wasn't just  
11 guessing on Mr. Barton's part, he says, "We ran the commission  
12 option through our developer decisioning model as well, but  
13 this will likely not make economic sense for the vast majority  
14 of developers with a 3 percent discount in the near term given  
15 that's roughly equivalent to the cost of payments." Correct?

16 A. Yes.

17 Q. And now do you remember back in May, Mr. Roman again, he  
18 testified that Apple didn't even try to assess the value of  
19 the cost of payments to developers.

20 A. I don't recall that statement.

21 Q. All right. Well, let's just see if I can refresh your  
22 recollection.

23 MR. BORNSTEIN: If we can put on the screen from  
24 May 10 the transcript of Mr. Roman's testimony, pages 266 to  
25 267.

(Exhibit published to witness, counsel, and the Court.)

**BY MR. BORNSTEIN:**

**Q.** Okay. And I'm focused here on the bottom, 266, line 22, Mr. Roman is asked:

"Q. And because Apple did not set out to assess the value of IAP, Apple also did not look at comparables to estimate the costs of alternative payment solutions that developers will need to procure to facilitate linked purchases, correct?"

"A. That is correct."

Do you recall hearing that testimony here in the courtroom?

**A.** Yes.

**Q.** Okay. And that is inconsistent with what Mr. Barton reflect -- what Mr. Barton's -- let me withdraw that.

Let's also take a look, just to get the full context of this, at page 305 of the testimony from the same day.

(Exhibit published to witness, counsel, and the Court.)

**BY MR. BORNSTEIN:**

**Q.** Here the Court was questioning Mr. Roman, and the Court asks:

"So you're telling me --"

At line 4.

-- "that a thousand people were involved and not a single person of that thousand said, hey, don't you think we should consider the cost of IAP to a developer? That's what I'm

1 supposed to believe?"

2 And after the witness says: "Your Honor, we" --

3 The Court says: "Just yes or no. Am I -- that not a  
4 single person raised this issue of the thousand that were  
5 involved, yes or no?"

6 And Mr. Roman says, "No."

7 Do you recall that testimony as well?

8 **A.** Yes, I do.

9 **Q.** Okay.

10 Let's move on to the decision [sic] that get made at this  
11 June 20 meeting.

12 These options that we saw, they were presented and  
13 discussed by you and Mr. Cook and Mr. Maestri and others,  
14 correct?

15 **A.** Yes.

16 **Q.** And coming out of that June 20 meeting, there was a  
17 decision made by Apple that it would charge a commission on  
18 the external purchase link, correct?

19 **A.** Yes.

20 **Q.** All right.

21 Hadn't yet decided what the commission would be, but the  
22 decision was we would charge something. Right?

23 **A.** Yes.

24 **Q.** Okay. And there was a subsequent meeting on June 28th, a  
25 little over a week later, that both you and Mr. Cook attended

1 to talk further about the implementation of the injunction  
2 response, correct?

3 **A.** I don't remember specifically.

4 **Q.** I'll try and help you out this time.

5 **MR. BORNSTEIN:** Let's take a look at Exhibit 532,  
6 please. Let's keep it off the screen. We haven't introduced  
7 it yet.

8 **THE WITNESS:** I have that.

9 **BY MR. BORNSTEIN:**

10 **Q.** All right. And you can see Exhibit 532.1 near the middle  
11 of the page, there is a calendar invite for June 28, 2023.  
12 Both you and Mr. Cook are identified as invitees.

13 Do you see that?

14 **A.** I see that.

15 **Q.** All right.

16 **A.** It's actually an email, not a direct calendar invite. I  
17 don't know whether this was written by someone or how that got  
18 there.

19 **Q.** Yes. Well, there's an email, and it has in it the text of  
20 what looks like a calendar invite with a date and a place and  
21 a list of attendees or invitees, and a title for the meeting.  
22 Correct?

23 **A.** Yes.

24 **Q.** Okay. And you acknowledge that you and Mr. Cook had a  
25 subsequent meeting with others to talk about the

1 implementation of the injunction issued by the Court, correct?

2 **A.** Yes.

3 **Q.** All right.

4 **MR. BORNSTEIN:** Your Honor, I'd move the admission of  
5 Exhibit 532, please.

6 **MR. PERRY:** No objection, Your Honor.

7 **THE COURT:** 532 is admitted.

8 (Exhibit 532 received in evidence.)

9 **BY MR. BORNSTEIN:**

10 **Q.** All right. And in the leadup to this meeting, you and  
11 others participated in working on a deck to be used for  
12 discussion; is that right?

13 **A.** I don't recall specifically.

14 **Q.** All right. We'll try and help you out again. Take a  
15 look, please, at Exhibit 279.

16 **A.** (Reviewing document.)

17 **Q.** And 279 is an email string involving a group of people at  
18 Apple including yourself, correct?

19 **A.** Yes.

20 **Q.** Dated June 26 and 27 of 2023, correct?

21 **A.** Yes.

22 **MR. BORNSTEIN:** All right. Your Honor, I move the  
23 admission of Exhibit 279.

24 **MR. PERRY:** No objection, Your Honor.

25 **THE COURT:** 279 is admitted.

(Exhibit 279 received in evidence.)

**BY MR. BORNSTEIN:**

**Q.** Okay. And so this email string begins with somebody named Tanya Washburn at Apple writing an email. And Ms. Washburn is in business operations in the App Store; is that right?

**A.** Yes.

**Q.** And Ms. Washburn is not a lawyer, is she?

**A.** No.

**Q.** Meaning -- sorry, that's a bad question.

Is Ms. Washburn a lawyer?

**A.** No, she is not.

**Q.** Good. No double negative that way.

**A.** Thank you.

**Q.** So Ms. Washburn, however, labels her email to the group "Attorney work product, privileged and confidential, prepared at the request of counsel."

Do you see that?

**A.** I see that.

**Q.** And she's attaching, she says here is the updated Wisconsin deck for review ahead of our meeting this Wednesday, June 28th. And she directs that to you, correct?

**A.** Yes.

**Q.** And Mr. Cue, correct? That's Eddy, Eddy Cue.

**A.** Yes.

**Q.** And what's Mr. Cue's role?

1 A. He is head of our services business.

2 Q. Okay. And so she sends you this deck. And in response  
3 you provide -- you pose some questions to her, correct?

4 A. Yes.

5 Q. And you label your questions "privileged and confidential,  
6 attorney work product," right?

7 A. Sure. Yes.

8 Q. Okay. And your -- neither of these questions is a request  
9 to Ms. Washburn for legal advice, right?

10 A. No.

11 Q. Meaning neither one -- I'm correct, neither one is a  
12 request for legal advice, correct?

13 A. Correct.

14 Q. Okay. And the first question you ask is: "Where does the  
15 data for the commission duration on Slide 10 come from? I  
16 don't see a source identified. How do we know what percentage  
17 of transactions occur per hour after a linkout from an app?  
18 Also I don't see the most logical datapoint which is as a  
19 direct result from a linkout regardless of time without  
20 leaving the browser session."

21 Do you see that question you posed?

22 A. Yes.

23 Q. And am I right that what you're asking about here is that  
24 the slide deck contains some information or estimates about  
25 the number of transactions or percentage of transactions that

1 would happen within a particular tracking window, and you're  
2 asking what's the source for the -- for those data?

3 A. Yes.

4 Q. Okay. And the reliability of the projections on -- or the  
5 estimates on the number of percentage of transactions that  
6 happen in the tracking window is important in part because  
7 Apple uses it to calculate what it calls an effective  
8 commission from the entitlement program, right?

9 A. That'd be one example where the data would be used. I  
10 don't think that's the only one. But that's certainly a use  
11 of the data.

12 Q. Great.

13 And so you got a response to your question, not from  
14 Ms. Washburn, but from Mr. Oliver, correct?

15 A. Yes.

16 Q. Mr. Oliver also labels his response privileged and  
17 confidential, right?

18 A. Yes.

19 Q. And he's not giving you any legal advice, right?

20 A. I do not believe so, no.

21 Q. Meaning he's not giving you any legal advice, correct?

22 A. Correct.

23 Q. Okay. From now on, I'm going to try to take  
24 responsibility for the grammar here. Sorry about that.

25 Now, Mr. Oliver, in his substantive response, says to you

1 that the data on Slide 10 -- this is the data you were asking  
2 about, right?

3 A. Yes.

4 Q. He says, "The data on Slide 10 is internal App Store data  
5 based on in-app purchase payer LTV," which is lifetime value?

6 A. Yes.

7 Q. -- "for various time durations after the initial  
8 purchase."

9 Right? That's his response?

10 A. Yes.

11 Q. And what he's telling you there is that the data that they  
12 used to estimate the number or percentage of purchases during  
13 the tracking window came from data on the revenue collected  
14 through IAP transactions in the app for various time durations  
15 after a user's first purchase, right?

16 A. Yes.

17 Q. And then the team used that in this deck as a proxy for  
18 the number or percentage of purchases that would be made on a  
19 developer's website after a linkout; is that right?

20 A. Yes.

21 Q. And you remember there were a lot of questions about the  
22 reliability of that data or that assumption for this purpose  
23 when we were here in May. Do you recall that?

24 A. Not specifically, no.

25 Q. Okay.

1 Well, the record will be what it be. I'll spare us the --  
2 the looking at the testimony.

3 But you -- you had a view on this. And you respond to  
4 Mr. Oliver in Exhibit 279 at June 27, at 3:46 a.m.

5 Do you see that?

6 **A.** I do.

7 **Q.** And I'm hopeful that's UTC just for your own sake and not  
8 Pacific time.

9 **A.** I don't know. It could be either.

10 **Q.** Okay. And your response to him, you say, "I'm not  
11 confident that the internal data you are using to estimate  
12 time duration is a reliable proxy for linking out." Correct?

13 **A.** Yes.

14 **Q.** Okay. And that was a real question that you had about the  
15 reliability of that data for the purpose for which Mr. Oliver  
16 and the team were using it, right?

17 **A.** It was my opinion.

18 **Q.** Okay. And if -- if you were right, and if it's not a  
19 reliable proxy for the number or percentage of linkouts  
20 purchases that are made after the tracking window, that calls  
21 into question the reliability of the effective commission  
22 calculations that are made using that data, right?

23 **A.** Yes.

24 **Q.** Okay. I'd like to turn to Exhibit 291, please, which  
25 should be the next one in your binder.

1 And Exhibit 291 it starts on .1, Mr. Schiller, with  
2 something that I acknowledge you probably haven't seen before.  
3 It's a -- a metadata sheet that reflects the information we  
4 received from Apple about some of the information associated  
5 with this document.

6 So you can take my representation on that. Okay?

7 **A.** Okay.

8 **Q.** And you'll see that this document has a list of custodians  
9 from which the document came. And you'll see you're listed as  
10 one of the custodians. Do you see that?

11 **A.** I do.

12 **Q.** And you'll see the title of the document file name down  
13 near the bottom is 2023.06.28 Wisconsin clean, team  
14 commission. Privileged and confidential.

15 Do you see that?

16 **A.** I do.

17 **Q.** Okay. And if you look at the second page, you'll see this  
18 is a presentation entitled Epic Injunction Implementation for  
19 June 2023. Correct?

20 **A.** Yes.

21 **Q.** Also labeled privileged and confidential, prepared at the  
22 request of outside counsel, right?

23 **A.** Yes.

24 **Q.** Okay. Now, this deck, this was the deck for that June 28  
25 meeting on which you provided your comments, correct?

1       **A.** I do not know for certain.

2       **Q.** At the bottom of the deck, on the various pages, you'll  
3       see there are speaker notes. And you can look at .3. Do  
4       you see that?

5       **A.** I do.

6               **MR. PERRY:** Your Honor, objection --

7       I'm sorry, my microphone.

8               **THE CLERK:** Okay.

9               **MR. PERRY:** This is another document of which there  
10       is a --

11              **THE COURT:** All right. We have a break coming up in  
12       half an hour. I'm sure you have more?

13              **MR. BORNSTEIN:** I do have more, Your Honor, yes.

14              **THE COURT:** Okay. Why don't -- can we skip over this  
15       until later?

16              **MR. BORNSTEIN:** Oh, you want to skip and come back?  
17       It --

18              **THE COURT:** I mean I don't understand -- I don't want  
19       to keep taking sidebars. So the question is, is the document  
20       that I've been given appropriately redacted or not?

21              **MR. PERRY:** Your Honor, my understanding is the first  
22       two pages, .3 and .4, are redacted. I don't know if  
23       Mr. Bornstein intends to use those or not.

24              **THE COURT:** Okay. So let's avoid 3 and 4 for now.  
25       And if there's an issue, we can come back to it.

1           **MR. BORNSTEIN:** What -- I can maybe get through this.

2           What are the redactions object .3 and .4 --

3           **THE COURT:** So we aren't --

4           **MR. BORNSTEIN:** Is it the slide or the speaker notes?

5           **MR. PERRY:** Speaker notes.

6           **MR. BORNSTEIN:** Okay. Including the very first one?

7           That's the only one I intend to use on .3.

8           **MR. PERRY:** I have no objection to you reading the  
9           very first one on .3, Mr. Bornstein.

10          **MR. BORNSTEIN:** Great.

11          **MR. PERRY:** Your Honor, I apologize for speaking  
12          directly.

13          Your Honor, we have no objection to Mr. Bornstein reading  
14          the very first bullet on Slide 3.

15          **THE COURT:** Great.

16          **MR. BORNSTEIN:** Great. And let's just keep it off  
17          the screen then to try to respect the process.

18          Okay. Thank you for working through that with me.

19          **Q.** Mr. Schiller, if you look at the very first bullet point  
20          on .3, it refers to someone named Jen.

21          Do you understand that's Jen Brown at Apple?

22          **A.** Yes.

23          **Q.** And Ms. Brown is in the litigation function; is that  
24          right?

25          **A.** Yes.

1 Q. And Ms. Brown is listed as saying, "When we last met, the  
2 direction was that we should charge a commission on  
3 transactions resulting from a link."

4 Do you see that?

5 A. Yes.

6 Q. Okay. And that's a reference here to that prior June 20  
7 meeting where you said the decision was made that Apple would  
8 charge some yet-to-be-determined commission, correct?

9 A. I would assume so. I don't recall these speaker notes and  
10 the timing of this deck versus that meeting. So I'm only  
11 inferring from what you're showing me.

12 Q. All right. Well, you can see from the file name, which is  
13 why I showed it to you on the first page, that it is from  
14 June 28, 2023, a clean version of the Wisconsin presentation,  
15 correct?

16 A. Yes.

17 Q. So safe to assume that the speaker notes are from a  
18 June 28 presentation?

19 A. I would assume that as well.

20 MR. BORNSTEIN: Okay. Your Honor, I'd move the  
21 admission, subject to potential redaction issues in the future  
22 that Apple may wish to raise, of Exhibit 291?

23 MR. PERRY: Subject to that issue, Your Honor, no  
24 objection.

25 THE COURT: All right. It's admitted subject to that

1 limitation.

2 (Exhibit 291 received in evidence.)

3 **MR. BORNSTEIN:** Great.

4 **Q.** Now let's turn if we -- stay -- sorry -- where we are on  
5 that second slide. I'm not going to read the speaker notes.

6 At the top of the slide, there are commission parameters  
7 listed. And if we're able to put on the screen just the slide  
8 itself without the speakers' notes, we can do that. Otherwise  
9 we'll just go along.

10 (Exhibit published to witness, counsel, and the Court.)

11 **MR. BORNSTEIN:** Thank you.

12 **Q.** The commission parameters that are listed here on 291.3  
13 are consistent with the commission option that we saw that was  
14 option 2 in the June 20 deck, Exhibit 224, correct?

15 **A.** It looks to be, yes.

16 **Q.** Okay. For example, the style is a developer-styled link  
17 rather than a requirement of a plain button, correct?

18 **A.** Yes.

19 **Q.** All right. And there's nothing here about keeping --  
20 requiring that the link not be somewhere in the buy flow,  
21 correct?

22 **A.** I do not see that here.

23 **Q.** All right. So as of June 28, at least, the discussion  
24 that was being had with Mr. Cook was grounded in this  
25 presentation where Apple had chosen it was going to charge

1 some commission but that it would be allowing developer-styled  
2 links that could be somewhere within the buy flow.

3 **A.** I don't believe that was the discussion we had with  
4 Mr. Cook. So I -- I would not jump to that -- that assumption  
5 just because of this slide. I -- I do believe we talked about  
6 buy flows and other things in the discussion.

7 **Q.** Right. Before we get to the discussion itself, certainly  
8 the slide that was used as part of the presentation  
9 contemplated that those would be the parameters associated  
10 with charging a commission, correct?

11 **A.** That's what this slide shows, correct.

12 **Q.** All right.

13 And consistent with what you just testified about the  
14 discussion, this is certainly not where Apple ultimately  
15 landed, correct?

16 **A.** Correct.

17 **Q.** All right.

18 So take a look, if you would at .11, 291.11.

19 (Exhibit published to witness, counsel, and the Court.)

20 **BY MR. BORNSTEIN:**

21 **Q.** And this shows that there are various commissions and --  
22 sorry. This one has various tracking windows associated with  
23 it, correct, commission duration?

24 **A.** Yes.

25 **Q.** Do you see that? Right.

1 And there are just a number of options that are laid out  
2 on this particular slide with no recommendation or suggestion  
3 about which one Apple should choose, right?

4 A. Correct.

5 Q. But we do see in the middle there the one week that Apple  
6 ultimately landed on, right?

7 A. Yes.

8 Q. And if we go to the next slide, here for discussion  
9 purposes, there is a 72-hour tracking window that is flagged  
10 in green, correct?

11 A. Yes.

12 Q. So at this point in time, there was at least discussion  
13 with Mr. Cook on June 28 about whether to select a 72-hour  
14 tracking window rather than the full week that Apple  
15 ultimately chose, correct?

16 A. No, that was not the purpose of this slide.

17 Q. Was there no discussion about the possibility of a 72-hour  
18 tracking window that --

19 A. Not at all. That's -- again wasn't the purpose of that  
20 slide.

21 Q. Okay. Well, we'll come back to that then.

22 Why don't we look at .14.

23 .14 has a range of commission options for both the  
24 standard rate and the program rate. Do you see that?

25 A. Yes.

1 Q. Okay. And for the standard rate, the range runs from  
2 20 percent to 27 percent. Correct?

3 A. Yes.

4 Q. Okay. And you did have a discussion at this meeting about  
5 which commission rate ultimately to select, correct?

6 A. I believe so.

7 Q. All right. And in fact there was a proposal that was on  
8 the table at the time that you all got together for this  
9 meeting, wasn't there?

10 A. I don't recall the specific proposal.

11 Q. All right. Well, let's take a look at .16. This is  
12 labeled "Epic Injunction Proposal," correct?

13 A. I see that.

14 Q. And the proposal on the slide is a 20 percent standard  
15 commission, correct?

16 A. Yes.

17 Q. And the proposal on the slide is that it applied to  
18 purchases initiated within 72 hours post linkout, correct?

19 A. Yes.

20 Q. And again this is not where Apple ultimately landed,  
21 right?

22 A. Correct.

23 Q. All right.

24 So the next meeting that happens, there's a price  
25 committee meeting that happens on July 5. This is the day you

1 thought maybe you would have to go live, correct?

2 **A.** Yes.

3 **Q.** All right. Let's have you take a look then at  
4 Exhibit 227.

5 **MR. BORNSTEIN:** Oh, and, Your Honor, I don't know if  
6 I moved Exhibit 291 -- oh, I did subject to --

7 **THE COURT:** You did, subject to --

8 **MR. BORNSTEIN:** Yeah. I did. I did.

9 **Q.** So let's go to Exhibit 227, please. And 227,  
10 Mr. Schiller, this is the July 5th, 2023, App Store price  
11 committee deck, correct?

12 **A.** Yes, it looks to be that.

13 **Q.** All right.

14 **MR. BORNSTEIN:** I move the admission of Exhibit 227,  
15 Your Honor.

16 **MR. PERRY:** No objection, Your Honor.

17 **THE COURT:** It's admitted.

18 (Exhibit 227 received in evidence.)

19 **BY MR. BORNSTEIN:**

20 **Q.** Now this deck, the App Store price committee deck, on the  
21 day that you anticipated going live, this one is not labeled  
22 privileged or confidential, is it?

23 Let me do it better. This one is not labeled privileged  
24 or confidential, correct?

25 **A.** I believe it is labeled confidential.

1 Q. Right. It says Apple confidential for internal use only.  
2 Right?

3 A. Yes.

4 Q. There's no privilege claim. There's nothing that says  
5 "prepared at the request of counsel" this time, right?

6 A. I don't see that.

7 Q. And this was the one that, at least at the time, you  
8 thought might be the final deck because you didn't know yet  
9 whether or not the stay -- a further stay would be granted of  
10 the injunction, correct?

11 A. I do not recall on July 5th what I thought about whether  
12 this was final or not. I don't recall.

13 Q. Okay. See if I can help on that.

14 So the page 227.3, Mr. Schiller, you'll see there's a  
15 timeline.

16 A. Yes.

17 Q. And it's called a compliance timeline. And you see in the  
18 bottom left corner, it says the Court's ruling on the motion  
19 to stay will dictate the date the mandate issues.

20 Right?

21 A. I see that.

22 Q. Okay. And then there are several columns on the slide  
23 that reflect items that are keyed and timing off of when the  
24 mandate issues. Do you see that?

25 A. Yes.

1 Q. So the mandate issues plus one day, the mandate issues  
2 plus five days, and so forth. Correct?

3 A. Yes.

4 Q. So at this point on July 5, what Apple is doing is it's  
5 preparing for the imminent issuance of the mandate so that it  
6 can be ready to put the injunction response plan into action.  
7 Fair?

8 A. I believe so, yes.

9 Q. All right. Now, look at the next slide .224.

10 On Exhibit 22 --

11 (Exhibit published to witness, counsel, and the Court.)

12 **BY MR. BORNSTEIN:**

13 Q. No. It's 227.4.

14 A. Thank you.

15 Q. This slide is titled "Link Entitlement Policies and User  
16 Experience," right?

17 A. Yes.

18 Q. And now here if you look on the bottom right, now in the  
19 final slide it reads that the link cannot be displayed on any  
20 page that is part of an IAP flow to merchandise or initiate an  
21 IAP, correct?

22 A. Yes.

23 Q. So by this point in time when you're preparing to go live,  
24 Apple has decided that it would impose this restriction on the  
25 placement of an external purchase link, correct?

1 A. That is what we're proposing.

2 Q. Okay. And this was the decision that was reached at the  
3 July 5 price committee meeting, not just a proposal, correct?

4 A. Again, I don't recall it as a decision. Certainly this is  
5 what we went in and proposed in this meeting. But the  
6 compliance plan did not begin yet so I don't recall how we  
7 talked about what's a decision or not a decision yet because  
8 we weren't doing it yet.

9 Q. Well, you understood that at this point in time the  
10 mandate could issue imminently, right?

11 A. It could, yes.

12 Q. Right. And so you needed to have an implementation plan  
13 that was ready to go for when the mandate come down, correct?

14 A. That was the goal, yes.

15 Q. Right. And so is your testimony that Apple didn't reach  
16 any decisions at this July 5 meeting about what the  
17 implementation plan would look like, or that you just don't  
18 remember one way or the other?

19 A. I don't remember one way or the other how we talked about  
20 it. I'm sorry.

21 Q. Okay. Logically, though, Apple needed to have a plan of  
22 record for how it would proceed if the mandate come down,  
23 correct?

24 A. Yes.

25 MR. PERRY: Objection, Your Honor, assumes facts not

1 in evidence.

2 **THE COURT:** Overruled.

3 **BY MR. BORNSTEIN:**

4 **Q.** Okay. And that means, Mr. Schiller, that people needed to  
5 walk out of this meeting on July 5 with an understanding of  
6 what it was Apple was going to do if the mandate issued,  
7 right?

8 **A.** I do not recall the discussion of how we ended this  
9 meeting and what we walked out saying.

10 **Q.** No. I -- you've already testified to that. But as a  
11 logical matter, Apple, as an organized entity that had to put  
12 into place a complicated response plan, needed to have  
13 decisions from its senior management about what that plan  
14 would look like when the injunction went effective. Correct?

15 **A.** I do not recall what we did. Sorry. I could imagine some  
16 things that have -- were said that said don't decide today, we  
17 don't need to decide today.

18 I don't recall.

19 **Q.** Okay. I am not asking you, sir, for your specific  
20 recollection of what happened at the meeting. What I'm asking  
21 is Apple actually needed to have a plan ready to go in case  
22 the mandate issued and it had to comply with the injunction.

23 **MR. PERRY:** Same objection, Your Honor.

24 **BY MR. BORNSTEIN:**

25 **Q.** Correct?

1           **THE COURT:** The objection is overruled.

2           You were part of the pricing committee.

3           **THE WITNESS:** Yes.

4           **THE COURT:** Right. You have a manner in which you  
5           have operated at Apple for decades.

6           **THE WITNESS:** Yes.

7           **THE COURT:** You had to have a plan, didn't you?

8           **THE WITNESS:** We went in with a proposal of a plan of  
9           what we were doing.

10           And to Mr. Bornstein's point, we had engineers working  
11           needing to know what should we work on right now. And that  
12           was all occurring, that is true.

13           **THE COURT:** Okay. Proceed.

14           **BY MR. BORNSTEIN:**

15           **Q.** Okay. And at the time you all walked out of this meeting,  
16           just to follow up one more time, there needed to be a decision  
17           that people could execute on in order to comply with this  
18           Court's injunction, correct?

19           **A.** Again, I -- I -- I agree with you in theory. I just don't  
20           remember that point.

21           **THE COURT:** That would be your general practice,  
22           wouldn't it?

23           **THE WITNESS:** Yes.

24           **MR. BORNSTEIN:** Thank you, Your Honor.

25           **Q.** Why don't we take a look at a different slide in here,

1 it's .11. And we're not going to put the numbers on the  
2 screen, but we can put it up blacked out.

3 (Exhibit published to witness, counsel, and the Court.)

4 **BY MR. BORNSTEIN:**

5 **Q.** One of the purposes of this July 5 meeting was to settle  
6 on the commission rate that would be charged and the tracking  
7 window that would be associated with it, correct?

8 **A.** Yes.

9 **Q.** All right.

10 And there is on Slide .11 an analysis of the financial  
11 impact of varying commission rates and tracking windows,  
12 correct?

13 **A.** Yes.

14 **Q.** All right. And the decision taken at this meeting was  
15 that the plan of record would be the 27 percent standard  
16 commission and the seven-day tracking window that Apple  
17 actually implemented in January of 2024, correct?

18 **A.** I don't recall that as a decision, leaving the meeting.  
19 It certainly was a discussion, but I don't recall that we left  
20 saying it's now a firm decision.

21 **Q.** Okay. I will see in a bit if I can refresh your  
22 recollection on that. But first, I just want to make sure --  
23 well, you know, why don't we do that. I'll skip ahead to  
24 that.

25 In July of -- July 17 of 2023 -- I'll just represent to

1 you about 12 days later -- that's when the Ninth Circuit  
2 issued a further stay of the injunction. Okay. So about a  
3 week and a half after this meeting. Does that sound about  
4 right to you?

5 **A.** Yes.

6 **Q.** I mean you remember that there was another stay and you  
7 had some more months before you had to comply?

8 **A.** Yes.

9 **Q.** Okay. And that Apple made a deliberate decision coming  
10 out of this meeting not to make another slide deck and not to  
11 document the decisions that were reached and the discussion  
12 that was had in this meeting; is that right?

13 **A.** I don't recall that.

14 **Q.** Well, do you remember, sir, you asked your colleagues  
15 whether there was an updated slide deck and you wanted to have  
16 one for your own reference. Do you remember that?

17 **A.** I don't recall that.

18 **Q.** Do you remember being told that Apple was not updating the  
19 deck in order to keep it privileged and protected from  
20 discovery?

21 **A.** I don't recall that.

22 **Q.** Well, take a look, if you would, at Exhibit 229.

23 (Exhibit published to witness, counsel, and the Court.)

24 **BY MR. BORNSTEIN:**

25 **Q.** Exhibit 229 is an email exchange that you participated in

1 with some of your colleagues at Apple on August 15, 2023,  
2 correct?

3 **A.** Yes.

4 **MR. BORNSTEIN:** Your Honor, I move the admission of  
5 Exhibit 229.

6 **MR. PERRY:** No objection, Your Honor, subject to the  
7 standing objection.

8 **MR. BORNSTEIN:** Okay.

9 **THE COURT:** 229 is admitted.

10 (Exhibit 229 received in evidence.)

11 (Exhibit published.)

12 **BY MR. BORNSTEIN:**

13 **Q.** And in 229 at the very end on .2, you write to your  
14 colleagues "Privileged and confidential, attorney work  
15 product. Is there a working document outlining the current  
16 proposed Wisconsin plan following the last exec meeting? I  
17 don't think I have seen any follow-up document or notes, and I  
18 want to have access to something as a reference."

19 Do you see that?

20 **A.** Yes.

21 **Q.** Okay. So you made this request. And what you received in  
22 response from somebody named Ling Liu, just above that, is the  
23 message, "Hi, Phil. We've saved in box the current draft  
24 versions of the developer support page and request form which  
25 should outline the proposed plan."

1 Do you see that?

2 **A.** I do.

3 **Q.** Okay. And then you respond to Ms. Liu, "Don't we think it  
4 would be helpful to update the slides, along with the  
5 financial analysis we presented to reflect the commission and  
6 duration discussions that were made in the meeting that were  
7 different than what we presented? Otherwise there's no plan  
8 of record or the forecast of ranges of expected results."

9 Do you see that?

10 **A.** Yes, I do.

11 **Q.** And you're talking about the discussions at that July 5  
12 meeting for the deck that we were just looking at, right?

13 **A.** Yes.

14 **Q.** Okay. And the response you get back is, "Here's an  
15 updated version of the deck."

16 And then the following.

17 "At this point the prior deck and this deck are privileged  
18 and confidential, reflecting litigation strategy and legal  
19 risk analysis. We would prefer to keep it that way for now.  
20 When we have to comply, within days of that date, we will  
21 finalize the tentative plan and have a document reflecting the  
22 factors considered to support the decision. Until that point,  
23 we would have this document as a point of reference but not  
24 share it further."

25 Do you see that?

1 A. I do.

2 Q. So you're being told here that Apple is intentionally not  
3 updating the deck in order to maintain privilege. Correct?

4 A. I believe so.

5 Q. Apple is deliberately keeping the plan as tentative and  
6 then finalizing it later with a deck that it is expecting to  
7 produce in discovery, right?

8 A. I'm sorry. Could you repeat that? I lost it halfway  
9 through my -- I apologize.

10 Q. Sure. What's going on, according to Ms. Brown, the  
11 litigation lawyer at Apple, is that "when we have to comply,"  
12 when Apple actually has to launch the program, at that point  
13 within days of launching, it would finalize the plan that was  
14 tentative and create a document at that point that it could  
15 produce in discovery and not be privileged. Correct?

16 A. Well, the -- I was with you to say yes until that last  
17 part about discovery and privilege because I don't know that  
18 that's what the legal team is thinking or not on that part.  
19 So that's not for me to say their thoughts.

20 Q. All right. Well, let me set that aside, and maybe  
21 somebody else will answer that question.

22 It was the case that you're being told by a litigation  
23 lawyer at Apple that you are not going to be provided -- in  
24 response to your request for an updated deck, you're being  
25 told no, no, no, we're going to leave what we have now as

1 privileged, and when we have to comply, within days of that  
2 date we'll make something new to reflect our decision-making.  
3 Correct?

4 **A.** Correct.

5 **Q.** Okay. And by the way, just in terms of what happened at  
6 that July 5 meeting, if you look at your email at the top of  
7 the page, you say in the third paragraph.

8 "While I question whether the analysis of net impacts on  
9 Slide 15 will be correct at the recommended amounts and  
10 duration, 27 percent and seven days, I understand the  
11 methodology and assumptions that generated it."

12 Do you see that?

13 **A.** Yes.

14 **Q.** Does that refresh your recollection that the  
15 recommendation coming out of that July 5 meeting was the  
16 27 percent commission and seven-day tracking window that Apple  
17 ultimately implemented in January of 2024?

18 **A.** Yes.

19 **Q.** Okay. And now zipping forward. After the July 5 meeting  
20 and the stay that gets granted by the Ninth Circuit, there's  
21 not a lot of activity that happens at Apple regarding the  
22 injunction response plan until around December of 2023 and  
23 January of 2024 as the time is coming when you're anticipating  
24 some kind of ruling from the Supreme Court, correct?

25 **A.** I can't state a lot or not a lot of activity during that

1 time. I'm sorry, I don't know how to judge that.

2 Q. Okay. Well, let's -- let's do it this way.

3 Last time you were here, you testified that the final  
4 in-person price committee meeting regarding the injunction  
5 response plan happened on January 11 of 2024.

6 Does that sound right to you?

7 A. Yes, it does.

8 Q. And I'll just represent to you that's what you said last  
9 time. Do you have any reason to disagree?

10 A. No.

11 Q. Okay. And there was a deck that was presented at that  
12 in-person price committee meeting, correct?

13 A. Yes.

14 Q. All right.

15 MR. BORNSTEIN: And this is already in evidence, Your  
16 Honor. It's Exhibit CX54.

17 (Exhibit published to witness, counsel, and the Court.)

18 MR. BORNSTEIN: The testimony is this is the deck  
19 from the January 11, 2024 meeting.

20 Q. And do you see, Mr. Schiller, this deck too is labeled  
21 "attorney client privileged, prepared at the direction of  
22 counsel."

23 A. Could I get that on my screen? I don't -- my screen's  
24 off.

25 Q. Oh, it's on my screen. It should be in your binder

1       though.

2               **THE WITNESS:** You can make sure it's --

3               **THE CLERK:** Do you want it on?

4               **THE COURT:** For him.

5               **MR. BORNSTEIN:** It might help if you tap it. Maybe  
6       that might make it go on.

7               **THE COURT:** No. She needs to make sure he has it.

8       Is it there now?

9               **THE WITNESS:** Yes. Thank you very much.

10      **BY MR. BORNSTEIN:**

11      **Q.** Okay. And so CX54, Mr. Schiller, the price committee deck  
12      from the January 11 in-person meeting, 2024, in-person  
13      meeting, this one is labeled "attorney client privileged,  
14      prepared at the direction of counsel." Correct?

15      **A.** I see that, yes.

16      **Q.** And then after this meeting, the decision was made to  
17      finalize the determination of what would be in the injunction  
18      response plan through an exchange of emails among members of  
19      the price committee, correct?

20      **A.** Yes. It was more than exchange of emails. It was -- we  
21      call that an email price committee. We've done it on other  
22      occasions as well. Where we haven't made the final decision  
23      and we -- rather than have everyone meet in the room again, we  
24      can handle it via email. So it was an email approval of the  
25      price committee.

1 Q. Right. And there was a deck associated with -- with that  
2 email approval of the price committee as well. Correct?

3 A. Yes, correct.

4 Q. All right.

5 MR. BORNSTEIN: And this is also in evidence, Your  
6 Honor, if we can put it on the screen. It's CX9A.

7 (Exhibit published to witness, counsel, and the Court.)

8 BY MR. BORNSTEIN:

9 Q. And Mr. Schiller, this is the final price committee deck  
10 dated January 16, 2024, for the external purchase link  
11 entitlement that you signed off on, correct?

12 A. I believe so.

13 Q. And for this final one, Apple again took off the privilege  
14 stamp, correct?

15 A. I see that, yes.

16 Q. Yes. And are you aware that Apple then submitted this one  
17 to the Court in opposition to Epic's motion to enforce the  
18 injunction as evidence of the decision-making process that  
19 Apple went through to get to its injunction response plan?

20 A. I'm not sure what was submitted or not. Sorry.

21 Q. Fine. The docket will reflect what it reflects at docket  
22 entry 916-07.

23 MR. BORNSTEIN: Your Honor had mentioned a break.  
24 I'm going to move to a different topic. I'm happy to keep  
25 going or take the break. I just thought I'd raise the

1 question.

2 **THE COURT:** We break at -- so since we're going to go  
3 until 4:00 o'clock, we'll break at 11:50 which is ten minutes.

4 **MR. BORNSTEIN:** Sure.

5 **THE COURT:** And then we'll have a 40-minute break and  
6 then come back for another three-plus hours.

7 **MR. BORNSTEIN:** Very good.

8 **Q.** So, Mr. Schiller, I'm going to switch to an entirely  
9 different subject here, which is the warning screen that is  
10 associated with the purchase link entitlement program, okay?

11 **A.** Yes.

12 **Q.** And the way this works is when a user clicks on the link,  
13 the screen pops up word for word the exact same screen with  
14 the exception of customizing the name of the developer's link  
15 every time, correct?

16 **A.** Yes.

17 **Q.** And that's the result of an API that developers have to  
18 use so that the exact right screen pops up to warn the user,  
19 correct?

20 **A.** Correct.

21 **Q.** So I want to talk about how we got to this particular  
22 screen.

23 So there was a meeting on May 25, 2023. We're going back  
24 in time now for a different subject. Right. May 25, 2023,  
25 there's a Wisconsin meeting that you attend.

1 Do you by chance remember that date?

2 **A.** No, sorry, I do not.

3 **Q.** Okay. I will show you tab 490.4. And this is another  
4 meeting invite for a meeting on May 25, 2023, where you are  
5 listed as having accepted the invitation.

6 **A.** I see that.

7 **MR. BORNSTEIN:** Your Honor, I move the admission of  
8 Exhibit 490.

9 **MR. PERRY:** No objection, Your Honor.

10 **THE COURT:** It's admitted.

11 (Exhibit 490 received in evidence.)

12 **BY MR. BORNSTEIN:**

13 **Q.** And then, Mr. Schiller, there's a deck that was presented  
14 at this meeting. There are a lot of decks at Apple, aren't  
15 there?

16 **A.** Yes, there are.

17 **Q.** And so do you recall there was a deck presented at this  
18 meeting as well?

19 **A.** I do not recall that.

20 **Q.** Let me ask you to take a look then at Exhibit 484.

21 **A.** (Reviewing document.)

22 **Q.** And Exhibit 484 is an email dated May 25, 2023, same day  
23 we've been talking about. And you're not on this one, but it  
24 is titled "Phil Deck Wisconsin." Do you see that?

25 **A.** Yes.

1 Q. And the author of this email is someone named Terry Liu.  
2 Mr. Liu in the design function at Apple?

3 A. I'm sorry. I'm not sure who Mr. Liu is.

4 Q. Okay. Somebody else will help us during the course of the  
5 proceedings.

6 But Mr. Liu writes, "Here a is PDF of what design will  
7 present to Phil for Wisconsin tomorrow at 9:00 a.m."

8 Do you see that?

9 A. I see that.

10 Q. Okay. And keeping in mind that we're dealing with, again,  
11 funny time zones so that Mr. Liu's email, it's labeled May 25  
12 at 3:44 in the morning was really sent in the Pacific Time  
13 zone sometime in the latter half of May 24, can we agree that  
14 this is a PDF of the deck that Mr. Liu and his team were  
15 intending to present to you at the May 25 meeting?

16 A. I do not know since I was not on this.

17 Q. Okay. But it does -- we can agree it's labeled "Phil  
18 Deck" and -- and Mr. Liu says he's -- this is a PDF of what he  
19 will present to Phil, correct?

20 A. Yes.

21 MR. BORNSTEIN: Okay. Your Honor, I move the  
22 admission of Exhibit 484.

23 MR. PERRY: No objection, Your Honor.

24 THE COURT: 484 is admitted.

25 / / /

(Exhibit 484 received in evidence.)

**MR. BORNSTEIN:** All right.

(Exhibit published to witness, counsel, and the Court.)

**BY MR. BORNSTEIN:**

**Q.** And Mr. Liu, by the way, he labels his email privileged and confidential, and there's a privileged and confidential stamp on the first page of the deck, on page 2 as well, correct?

**A.** I see that.

**Q.** Now let's look at Slide 6 or .6 of the deck that Mr. Liu prepared and presented.

(Exhibit published to witness, counsel, and the Court.)

**BY MR. BORNSTEIN:**

**Q.** In the center, there is a warning screen, correct?

**A.** Yes.

**Q.** And up on top, it says, "Current reader app entitlement worldwide." Right?

**A.** Yes.

**Q.** And do you understand that to be a reference to the warning screen that Apple, at this point in May of 2023, was using on a worldwide basis for what are called reader apps when people click on a link to go out to a developer's website?

**A.** I believe so.

**Q.** And if you jump ahead to Slide .44. It's right near the

1 end. In fact it is the end. There's something labeled  
2 "future sheet design idea." Do you see that?

3 **A.** I do.

4 **Q.** And on the left, there's the current worldwide design.  
5 There's a code name there I won't read. But on the left, it's  
6 the -- what was then the worldwide design we had just looked  
7 at, correct?

8 **A.** Yes.

9 **Q.** All right. And on the right, there's a proposal for a  
10 future design for use in the Wisconsin program, meaning the  
11 U.S. external link program that is the subject of this deck,  
12 correct?

13 **A.** I don't know. I don't recall this. And it's after the  
14 conclusion or the summary of the meeting. I don't know if  
15 that was presented or not. And I do not -- so I don't want to  
16 make any assumptions about what the intention of the proposal  
17 is.

18 **Q.** All right. Well, why don't we look at a deck we've looked  
19 at before and some ones we know were presented.

20 So let's go to CX224.

21 (Exhibit published to witness, counsel, and the Court.)

22 **BY MR. BORNSTEIN:**

23 **Q.** Which is in evidence already. And this is the deck from  
24 the June 20 meeting you attended with Mr. Cook. Okay?

25 **A.** Okay.

1 Q. And we're at Slide 22 -- sorry. Slide .7.

2 A. I see that.

3 Q. And here we have a proposed warning sheet to be used with  
4 the external purchase link entitlement, correct?

5 A. Yes.

6 Q. And this one, you can see the code name, the rest of us  
7 can't. This is the same worldwide warning screen that was  
8 being used on reader apps, correct?

9 A. It looks the same, yes.

10 Q. So at this point in time, at least for purposes of  
11 discussion, people are contemplating the possibility of using  
12 that same warning screen for the response plan to the  
13 injunction, correct?

14 A. Yes.

15 Q. But at this meeting, Mr. Cook suggested some changes,  
16 didn't he?

17 A. Well, I recall there was discussion around the warning  
18 screen and whether it was clear to users what was going to  
19 occur. Yes, I remember --

20 Q. Okay.

21 A. -- a discussion.

22 Q. Right. But my question was at this meeting, Mr. Cook  
23 personally suggested some changes to the warning screen. Do  
24 you recall that?

25 A. I -- I don't recall who made which suggestion. I know

1 there was a discussion during the meeting with people even  
2 suggesting different edits of it. I don't recall who said  
3 what.

4 **Q.** Okay. You don't recall Mr. Cook's comments? He's not  
5 just anybody.

6 **A.** He's certainly not just anybody. But again there was  
7 discussion with everyone in the meeting, and I don't recall  
8 who said what.

9 **Q.** All right. Let's look at Exhibit 225 then.

10 Exhibit 225 is an email from Shawn -- Shawn Cameron at  
11 Apple to Mr. Cook, copying you and others, dated June 23,  
12 2023, correct?

13 **A.** I see that, yes.

14 **MR. BORNSTEIN:** Your Honor, I move the admission of  
15 Exhibit 225.

16 **MR. PERRY:** No objection, Your Honor.

17 **THE COURT:** 225 is admitted.

18 (Exhibit 225 received in evidence.)

19 (Exhibit published to witness, counsel, and the Court.)

20 **BY MR. BORNSTEIN:**

21 **Q.** And in Exhibit 225, Mr. Cameron writes, "Tim, at our  
22 meeting on Tuesday, you asked the team to revise the customer  
23 warning screen."

24 Do you see that?

25 **A.** I do.

1 Q. Okay. Does that refresh your recollection of Mr. Tim --  
2 Mr. Cook making this request?

3 A. Not specifically, no.

4 Q. No reason to doubt that Mr. Cameron got it right, though,  
5 right?

6 A. No, I do not --

7 Q. Okay.

8 A. -- have a reason to doubt it.

9 Q. Great. So Mr. Cameron says, "At our meeting on Tuesday,  
10 you asked the team to revise the customer warning screen which  
11 is surfaced when a customer taps on a link to the developer's  
12 website, to reference the fact that Apple's privacy and  
13 security standards do not apply to purchases made on the web."

14 Right?

15 A. Yes.

16 Q. And he goes on to say that they worked on updated copy and  
17 we reviewed with Phil, Matt, and Jeff.

18 And that Phil is a reference to you, of course?

19 A. Yes.

20 Q. All right.

21 And so you personally weighed in on this warning screen  
22 before it was submitted back to Mr. Cook, correct?

23 A. I believe -- yeah, I don't recall what the back-and-forth  
24 was on it. I know I saw a new updated warning screen, and it  
25 was sent for approval, yes. I recall that.

1 Q. All right. Well, let's turn the page and you can see on  
2 the -- on the left is that same current worldwide screen that  
3 was being used for the reader program with that code name in  
4 the top left corner that's blacked out for the rest of us,  
5 right?

6 A. Yes.

7 Q. Okay. And on the right is the updated proposal that was  
8 put together to address Mr. Cook's comment, right?

9 A. Yes.

10 Q. And says updated copy. Correct?

11 A. Correct.

12 Q. All right.

13 And the updated version responding to Mr. Cook's copy --  
14 Mr. Cook's comment changes what had been a sentence that says,  
15 "You will no longer be transacting with Apple" to a sentence  
16 that says, "Apple is not responsible for the privacy or  
17 security of purchases made on the web." Correct?

18 A. Yes.

19 Q. All right. So Mr. Cook is the one who suggested replacing  
20 one bold sentence on top about not transacting with Apple with  
21 a different bold sentence on top that invokes privacy and  
22 security risks, correct?

23 A. I don't recall how the dialogue happened in the discussion  
24 in the meeting. I know there was a discussion. I don't  
25 remember who said what.

1 Q. All right. Let's go back to the June 28th deck. It's  
2 Exhibit 291 already in evidence.

3 (Exhibit published to witness, counsel, and the Court.)

4 **BY MR. BORNSTEIN:**

5 Q. And if we go to Slide .5, here on the top, we have on  
6 the slide the same two draft warning screens, right, that we  
7 were just looking at?

8 A. I see that.

9 Q. All right. And there are speaker notes from someone named  
10 Ann. Is that Ann Thai?

11 A. It is.

12 Q. And she's also a business person with App Store  
13 responsibilities?

14 A. Yes.

15 Q. And Ms. Thai's speaker notes say again, "Tim, based on  
16 your feedback, here is the system disclosure sheet with the  
17 updated copy on the right." Correct?

18 A. Yes.

19 Q. And the final version of the warning screen that was  
20 adopted in the external link purchase -- the external purchase  
21 link entitlement program actually has that sentence in bold at  
22 the top as reflected on the right of this slide, correct?

23 A. It is.

24 Q. Okay. There were some -- some other changes that were  
25 made, but that -- that stayed as part of the final slide,

1 correct?

2 **A.** I believe so.

3 **Q.** Okay.

4 **MR. BORNSTEIN:** Did Your Honor want to take the break  
5 now?

6 **THE COURT:** Are you switching topics?

7 **MR. BORNSTEIN:** I am, Your Honor.

8 **THE COURT:** Okay.

9 (Discussion off the record.)

10 **THE COURT:** My court reporter says 30 minutes would  
11 be sufficient.

12 I'm going to ask that you all leave the courtroom so that  
13 my staff gets a break. You can leave what you want. The  
14 doors will be closed. But everybody does need to leave the  
15 courtroom.

16 We'll stand in recess for 30 minutes. Thank you.

17 (Recess taken at 11:53 A.M.; proceedings resumed at  
18 12:24 P.M.)

19 **THE COURT:** Okay. We're back on the record.

20 The record will reflect the parties are present. We're  
21 getting our mics.

22 One question, we have not been publishing these exhibits  
23 to the gallery. Did you want them published to the gallery?

24 **MR. BORNSTEIN:** I don't have a strong preference. I  
25 think I guess in the ordinary course, we would, Your Honor.

1 We are redacting things that are confidential. And in --

2 **THE COURT:** I just --

3 **MR. BORNSTEIN:** -- the interest of the public record,  
4 that seems like the right thing to do, yes.

5 **THE COURT:** Okay. That's fine. We had not been  
6 doing it, and I don't -- maybe I just wasn't clear.

7 Mr. Perry, you agree?

8 **MR. PERRY:** We have no objection, Your Honor. The  
9 ones that are showing on our screen, the confidentiality  
10 redactions are highlighted, not redacted, so if they're  
11 published, then you can see the highlight --

12 **THE COURT:** Correct. What you all are seeing on your  
13 screen, if we publish them to the gallery, they will be seen.  
14 So I just -- it doesn't matter to me.

15 **MR. BORNSTEIN:** The ones that have been appearing on  
16 this screen, Your Honor, which is what I've been looking at  
17 during the examination, they have material blacked out rather  
18 than --

19 **THE COURT:** Correct.

20 **MR. BORNSTEIN:** -- highlighted.

21 **MR. PERRY:** They're done two different ways, Your  
22 Honor. I don't -- Epic's documents, we didn't do these. We  
23 have no problem if they're blacked out. If they're  
24 highlighted, then they're just highlighting the confidential  
25 information.

1           **MR. BORNSTEIN:** We don't have anything that Mr. Lyon  
2           has for the screen where the confidential information is  
3           highlighted. That was provided to you.

4           **MR. PERRY:** But that's --

5           **THE COURT:** We will -- we will then publish them to  
6           the gallery.

7           Whenever the witness has it, we can publish it to the  
8           gallery unless I explicitly tell you otherwise.

9           All right. Go ahead.

10          **MR. BORNSTEIN:** Your Honor, I took the opportunity  
11          during the lunch break to organize my examination, and I am  
12          going to pass the witness.

13          **THE COURT:** Okay.

14          Mr. Perry?

15          **MR. PERRY:** And, Your Honor, I apologize. We did it  
16          differently. Ours are highlighted, not redacted. So we would  
17          like to not show ours on the public gallery if there's a  
18          highlighting on the document. There aren't very many, by the  
19          way.

20          **THE COURT:** Okay. So then do not publicize them  
21          unless I -- unless it's explicit. All right.

22          Is there a binder for me?

23          **MR. PERRY:** Yes, Your Honor. We gave them to the  
24          clerk earlier.

25          **THE COURT:** All right. Mr. Perry, you may proceed.

1                   **MR. PERRY:** Thank you, Your Honor.

2                                   **CROSS-EXAMINATION**

3           **BY MR. PERRY:**

4           **Q.** Good afternoon, Mr. Schiller.

5           **A.** Good afternoon.

6           **Q.** I think we touched on this a little bit early, but just to  
7 be clear, you recall when you finished testifying last May,  
8 the Court admonished you not to discuss the case with anyone?

9           **A.** Yes.

10          **Q.** And have you complied with the Court's admonishment, sir?

11          **A.** Yes, I have.

12          **Q.** How long has it been since you met with counsel to prepare  
13 for your testimony?

14          **A.** I have not met with counsel to prepare for testimony  
15 previous -- since the previous-to-the-last time we were here  
16 last May.

17          **Q.** Fair enough. And other than this morning when I said good  
18 morning to you, when is the last time you and I saw each  
19 other?

20          **A.** I don't recall having seen you since last May other than  
21 this morning.

22          **Q.** Mr. Schiller, are you aware that after your previous  
23 testimony, the Court ordered Apple to produce documents about  
24 the decision-making process?

25          **A.** Yes.

1 Q. And you were designated as a custodian of documents and  
2 your files were searched. Do you recall that?

3 A. Yes.

4 Q. Were you provided copies with any of those documents?

5 A. I do not believe I was provided copies of anything that  
6 was searched or provided to the Court, no, I don't think so.

7 Q. And did you have the opportunity to review any documents  
8 with me or any other counsel before you testified today?

9 A. No, I did not.

10 Q. You understand that you have been designated as Apple's  
11 corporate representative in this case, Mr. Schiller?

12 A. Yes.

13 Q. And you sat through the last proceeding and the merits  
14 trial; do you recall that?

15 A. Yes, I did.

16 Q. Have you been able to meet with me or the legal team to  
17 plan for the strategic or tactical portion of this hearing  
18 before today?

19 A. No.

20 Q. All right. Let's move on, Mr. Schiller, to the injunction  
21 compliance work that we are here for.

22 You testified earlier today that you spent basically the  
23 time since the decision issued preparing for this injunction  
24 compliance; is that right?

25 A. Yes.

1 Q. Did you read the injunction personally?

2 A. Yes, I did.

3 Q. And the order in this case which came out at the same  
4 time, did you read that as well?

5 A. Yes.

6 Q. It was 185 pages long?

7 A. Yes.

8 Q. Do you recall discussing that order with a reporter  
9 shortly after it came out?

10 A. No, I don't recall.

11 Q. Let me show you a document solely to refresh your  
12 recollection, sir. It's in your tab at CX1100.

13 A. (Reviewing documents.)

14 I see that document.

15 Q. Mr. Schiller, this is a September 12th email from PR  
16 group -- within PR group. What -- do you remember when the  
17 Court's decision was in this case?

18 A. In September of 2021.

19 Q. And without reading the document out loud, if you just  
20 read the first paragraph or the first sentence, does that  
21 refresh your recollection, sir, that you spoke with a reporter  
22 shortly after this decision was issued?

23 A. It refreshes my recollection that I spoke with a reporter.  
24 I don't remember the conversation at all.

25 Q. You don't remember anything about it?

1 A. I'm sorry, I do not.

2 Q. Okay. Let me just ask you one -- one question about it  
3 that might refresh your recollection.

4 If you look at the last page, which was 17411,  
5 Mr. Schiller.

6 A. I see that.

7 Q. Do you see your initials there toward the top, PS?

8 A. I do.

9 Q. And again without reading it out loud, could you just read  
10 that to yourself, please?

11 A. (Reviewing document.)

12 I've read that.

13 Q. And does that refresh your recollection about what you  
14 discussed with this reporter?

15 A. I'm sorry, it does not.

16 Q. Quite all right, Mr. Schiller. It was a fair bit of time  
17 ago.

18 Let's move on from there.

19 Mr. Bornstein asked you a number of questions today about  
20 Apple's work in connection with developing a compliance plan.  
21 Do you recall that?

22 A. Yes.

23 Q. And can you describe just in more general terms how that  
24 work progressed with your role in it.

25 A. As we stated previously when I was questioned, it began

1 immediately working on a compliance plan in 2021. First  
2 understanding the ruling, reading it, discussing it with legal  
3 counsel to understand what it means for us.

4 We began having conversations in '21 working up through  
5 '23. And then as been discussed, there were a number of other  
6 activities in 2023 with appeals and things like that, that the  
7 team kept us updated.

8 And we added people throughout the process to work on a  
9 compliance in a cross-functional way across teams at Apple,  
10 eventually culminating in the final plan and implementation.

11 Q. Now you've mentioned a couple times today the involvement  
12 of legal counsel, Mr. Schiller. And without discussing what  
13 you addressed with legal counsel, is it usual in your position  
14 at Apple to have legal counsel involved in a -- in a project  
15 like this?

16 A. Like this? This is a fairly unique project, I would say.

17 Q. Why is that?

18 A. Because it is a injunction. It's a legal order. And so  
19 the definition of it involves the legal team and legal  
20 understanding.

21 Q. And again without revealing the substance of  
22 communications, from your perspective as a business leader at  
23 Apple, why, in this unique project, were the lawyers involved?

24 A. Well, in this case, a key element was trying to understand  
25 what the requirements of the injunction were and what elements

1 we would put in place to meet the requirements of the  
2 injunction, and -- and that all involves legal interpretation  
3 and understanding that others need to provide advice to myself  
4 and the team about.

5 Q. Now, you're not a lawyer, right, Mr. Schiller?

6 A. I am not.

7 Q. Are you an expert in the doctrine of attorney-client  
8 privilege?

9 A. I am not.

10 Q. Mr. Bornstein asked you a number of questions about why  
11 certain documents or whether certain documents were labeled  
12 "privileged and confidential."

13 Did you -- did you personally make that decision to label  
14 documents in that way?

15 A. Most of the time, no. A few times I've had to put them on  
16 because I'm communicating something that already was  
17 established or marked as privileged and confidential. So I  
18 try not to break whatever someone else has said, is how we do  
19 it.

20 But I -- again I'm no expert on it. And I always do that  
21 assuming that the courts will decide what's right and what's  
22 privileged, not me.

23 Q. Now, Mr. Bornstein walked you through several decks today,  
24 from May in 2023, that's Exhibit 272; three from June in '23,  
25 that's 223, 224, and 291; from July of 2023 which is 227.

1 Are those the only materials that came to you regarding  
2 this injunction compliance program?

3 **A.** No, they are not.

4 **Q.** Were any of those decks up to July 5th, 2023, finalized by  
5 the executives at Apple?

6 **A.** Finalized in the sense that we -- we did not finalize them  
7 in the sense that we did not make a final decision to go  
8 forward with implementation yet. So they were discussions,  
9 they were directions, but they were ultimately not the final  
10 until we were done.

11 **Q.** Now, Mr. Bornstein pointed out a few changes, if you will,  
12 from iteration to iteration of the deck. Is that consistent  
13 with your experience at Apple?

14 **A.** Very.

15 **Q.** Can you explain? How does that work? Why does that  
16 happen that way?

17 **A.** We often go into meetings with an example, a proposal, a  
18 couple proposals showing what we might do. And then we have a  
19 hopefully very full discussion about why certain elements are  
20 the way they are or -- or need to be or don't need to be. And  
21 then often that leads to more work and more investigation and  
22 new versions. And that's just standard collaborative process.

23 **Q.** Now, you mentioned in response to one of Mr. Bornstein's  
24 questions modeling certain assumptions. Do you recall that?

25 **A.** Yes.

1 Q. And what -- how does that process work at Apple? Do you  
2 do the modeling, Mr. Schiller?

3 A. I do not.

4 Q. So can you explain a little more about that?

5 A. In order to make progress on a number of these elements of  
6 the program, there are a certain number of variables that will  
7 ultimately need to be decided on. And we need to try to  
8 create an estimate, a model of how these programs will work.  
9 And so we have to identify the variables, decide to constrain  
10 some or -- or create variations on others in order to then  
11 show the effects of the different variables involved in the  
12 decision-making.

13 Q. Now, Mr. Bornstein showed you a -- a memo in which you  
14 questioned one of the assumptions in one of the versions. Do  
15 you recall that?

16 A. Yes, I do.

17 Q. And can you tell us a little bit about that and how that  
18 works at Apple?

19 A. Well, first, I tend to do that a lot so you'll see through  
20 documents I'll -- I'll challenge and question assumptions,  
21 trying to make sure I understand how either accurate they are  
22 or the degree of variability of these things. Just so that  
23 when we make decisions, we do it eyes open understanding the  
24 range of possible outcomes based on the source data and -- and  
25 how confident we are in the accuracy of them.

1 And in some of these cases that we were discussing today,  
2 they're based on the best data the team knows how to find to  
3 model and assume how it will work.

4 And I had to, in this case, decide -- make my own opinion  
5 about the accuracy of those models and whether that's the best  
6 data available to the team.

7 **Q.** When you -- in this project the injunction compliance  
8 project, Mr. Schiller, when you challenged assumptions, are  
9 you suggesting that they are wrong?

10 **A.** We'd have to look at each individually to be specific.  
11 But the one that I recall that was asked in questioning, I  
12 challenged the application of one set of data which was in-app  
13 purchase time versus what the linkout time might be because  
14 they're not identical.

15 But I didn't know they were wrong. I just didn't know to  
16 degree we could measure their accuracy. And so that -- my  
17 questioning was about the application of the data, not that I  
18 thought it was wrong.

19 **Q.** And the team responded to your inquiry, as we saw earlier.  
20 Did that satisfy that particular inquiry?

21 **A.** It did for me.

22 **Q.** Mr. Bornstein showed you in the slide decks various  
23 options for, for example, the placement of links or other  
24 information within an app. Do you recall that?

25 **A.** Yes.

1 Q. Why did Apple look at multiple options through the course  
2 of 2023?

3 A. There were a number of reasons for considering options for  
4 where links can be placed and how they would appear. For me,  
5 the -- one of the big reasons for wanting that exploration was  
6 to try to create a system that would be understood by users,  
7 what they are, and as safe as possible such that if a user  
8 followed a link, they knew what they were doing and they knew  
9 what it meant.

10 So understanding the different options available to us  
11 legally from the order, as well as available possible to  
12 execute through the software, and that would users understand  
13 were all some of the things I was thinking about.

14 Q. And in May of 2024, last time you were here, Mr. Schiller,  
15 you testified that you understood the purpose of the  
16 injunction was to allow for communication from developers to  
17 users about lower prices they may offer on the web.

18 Do you recall that?

19 A. Yes.

20 Q. Is that still your understanding?

21 A. Yes.

22 Q. And how does that relate, if at all, to the point you just  
23 made about the placement and style and other information about  
24 the links and other information?

25 A. We're trying to create an implementation that allowed

1 developers to communicate specifically that users could get  
2 lower prices on the web from the developer, and to make it  
3 clear that those lower prices are not in the app, not part of  
4 the IAP, they're outside the app.

5 And so I believe that was part of the consideration we  
6 were trying to solve for with the implementation.

7 Q. Mr. Schiller, you testified in May about that as well, the  
8 distinction between purchasing outside the app and within the  
9 app using IAP. Do you recall that?

10 A. Vaguely.

11 Q. Can you explain the distinction you're drawing of the App  
12 Store perspective between those types of transactions?

13 A. Well, I think they're -- they're two very distinct things.  
14 There are transactions that will occur in the app and that  
15 uses IAP. And there are transactions that developer can steer  
16 a user to go outside the app to get on their website. And  
17 that's another thing.

18 And these are two things that must be allowed. And trying  
19 to create a system to make it easy for developers to  
20 communicate that to users such that users understand those  
21 options, that's what we were trying to create.

22 Q. And in your view, Mr. Schiller, if we talk about the  
23 requirements, do you understand I mean the technical  
24 requirements for the -- for the link entitlement?

25 A. Yes.

1 Q. Do you have a view whether the final link entitlement  
2 meets the criteria you just described?

3 A. I think it does a good job given all the issues involved  
4 here. It's not an easy problem to solve. We're trying to  
5 give freedom to developers to communicate but do it in such a  
6 way that hopefully it won't be abused in a way that creates  
7 fraud and issues for users' safety and privacy. And try to  
8 find a balance between all those.

9 It is a balancing act between those elements. And I think  
10 we've tried to consider ahead all the different things that  
11 could occur and protect users from them. I'm sure we can do  
12 better, and there's more work to do.

13 Q. Mr. Schiller, if you could look in your binder.

14 MR. PERRY: This is already in evidence, Your Honor.

15 Q. There's CX2 which is the final version of the entitlement.

16 A. (Reviewing document.)

17 THE COURT: Okay. It can be published.

18 (Exhibit published.)

19 MR. PERRY: Thank you, Your Honor.

20 Q. Do you recognize this document, Mr. Schiller?

21 A. This looks to be the Apple support document or agreement  
22 for developers who want to create a linkout from their apps in  
23 the U.S.

24 Q. And if you just look at paragraph 3, is that where some of  
25 the requirements we've just been discussing and you were

1 discussing with Mr. Bornstein earlier, the final version are  
2 located?

3 A. (Reviewing document.)

4 Yes.

5 Q. Let me just ask you, Mr. Schiller, for example, in 3.3,  
6 the first four bullets basically pertain to requirements for  
7 the URL; is that correct?

8 A. Yes.

9 Q. Do any of those, in your view, interfere with developers'  
10 ability to communicate to customers the points we've discussed  
11 earlier?

12 A. I do not believe so.

13 Q. And I know you just testified in May of 2024 about the  
14 security and privacy reasons for that. Has anything changed  
15 since that testimony?

16 A. No.

17 Q. Okay. The fifth bullet requires developers to submit  
18 their links to the App Store. Why is that? Or App Review.  
19 Why is that?

20 A. So that App Review can check the link and make sure the  
21 user is going to a safe place as best as we can tell.

22 Q. Now, Mr. Bornstein asked you a number of questions  
23 regarding the formatting or style of the information,  
24 including the so-called plain button.

25 Do you recall that?

1       **A.** I do.

2       **Q.** And those requirements are in the separate Apple  
3 materials; is that correct?

4       **A.** Yes.

5       **Q.** If you turn in your binder to CX3.

6               **MR. PERRY:** It's already in evidence, Your Honor.

7               **THE COURT:** It can be published.

8               **MR. PERRY:** Thank you, Your Honor.

9                               (Exhibit published.)

10       **BY MR. PERRY:**

11       **Q.** Are these the Apple materials that set forth some of those  
12 requirements?

13       **A.** Yes, they are.

14       **Q.** And if you turn, Mr. Schiller, to CX3.5.

15                               (Exhibit published.)

16       **BY MR. PERRY:**

17       **Q.** Do you see the templates and style requirements there?

18       **A.** Yes, I do.

19       **Q.** Let me ask you a couple questions about those. Let's --  
20 let's look at the last one under Templates, for example.  
21 Specific price template \$54xxx@www.example.com [sic] external  
22 link symbol.

23               Do you see that?

24       **A.** Yes.

25       **Q.** You're familiar with the App Review Guidelines?

1 A. Yes.

2 Q. You, in fact, sit on the ERB which reviews guidelines  
3 compliance?

4 A. Yes.

5 Q. Under the version of the guidelines in effect at the time  
6 of the trial, the old guidelines, Mr. Schiller, would this  
7 statement have been permitted in an app?

8 A. No.

9 Q. Would this statement -- what -- what provision of the  
10 guidelines if you -- if you recall would this statement run  
11 afoul of?

12 A. We had a -- before the injunction, we had a guideline that  
13 did not permit linkouts or other calls to action to make  
14 purchases from within the app to outside of the app.

15 Q. And the guideline 3.1.3 actually said links, buttons, or  
16 other calls to action, correct?

17 A. Yes.

18 Q. Does the example at the bottom here include a link?

19 A. Yes.

20 Q. And what part of that is the link?

21 A. Well, both, yes, the entire thing is a link if the  
22 developer wants it to be.

23 Q. And does this include a call to action?

24 A. Yes, it does.

25 Q. And what part is a call to action?

1     **A.** Well, the language "to buy" for some amount on a website  
2     is what we would call a call to action.

3     **Q.** And does the example here, specific price template,  
4     include a button?

5     **A.** Yes, it does.

6     **Q.** And what part of that is the button?

7     **A.** The visual part of the button is that square with the  
8     arrow out of it, the linkout button. The whole thing performs  
9     like a button, but that visually looks like a button.

10    **Q.** And under the pre-injunction guideline, would or could  
11    this statement have been rejected under any of those three  
12    requirements of the 3.1.3?

13    **A.** Yes.

14    **Q.** Under the injunction compliance program established by  
15    Apple, are these statements permitted?

16    **A.** Yes.

17    **Q.** There's been a lot of discussion in this case about the  
18    plain button. Do you recall that?

19    **A.** Yes.

20    **Q.** Okay. Let me show you another document, Mr. Schiller.  
21    It's in your binder, CX1103.

22           **MR. PERRY:** And this is not confidential, Your Honor.

23           **THE COURT:** All right. It can be published.

24           **MR. PERRY:** Well, I should say it has personally  
25    identifiable information redacted. The rest of it is not

1 confidential, just to be clear.

2 **THE COURT:** Okay.

3 (Exhibit published.)

4 **BY MR. PERRY:**

5 **Q.** Do you recognize this document, Mr. Schiller?

6 **A.** I -- yes, it's an email.

7 **Q.** And the second one down, is that from you?

8 **A.** Yes.

9 **Q.** And can you identify what the general subject of this is?

10 **A.** This is specifically about the linkout graphic, that  
11 square with the arrow out of it that's part of the  
12 specifications of the linkout.

13 **MR. PERRY:** Your Honor, we move the admission of  
14 CX1103.

15 **MR. BORNSTEIN:** No objection, Your Honor.

16 **THE COURT:** It's admitted.

17 (Exhibit 1103 received in evidence.)

18 **BY MR. PERRY:**

19 **Q.** Mr. Schiller, you write there that is not the graphic I  
20 drew on the board that represents a standard external web link  
21 button.

22 What is a standard external web link button, to your  
23 understanding?

24 **A.** Well, I recall this meeting specifically where I drew  
25 this. We were trying to create a specification that showed

1 not only the text of the linkout but also allowed a button per  
2 the language that when buttons are now allowed and wanted to  
3 make sure that we created button style that would be easy for  
4 users to recognize as a linkout button, not an in-app purchase  
5 button.

6 And in this meeting, I actually did a Google search on  
7 linkout button styles and up came a graphic as the most common  
8 linkout button available on the Internet. And it was what  
9 ultimately we created, that square with the arrow out of it.

10 In this email, I remember as a follow-up to the meeting, a  
11 team came back with a picture of a button that didn't look  
12 like that button I had seen doing a Google search. And so  
13 that's what this back-and-forth discussion was about.

14 **Q.** And in the templates that Apple now provides under the  
15 link entitlement, what kind of button is identified?

16 **A.** That same graphic that I found in a Google search for  
17 linkout on the web, which is a square that represents a page,  
18 with an arrow leaving it to express leaving the page you're  
19 on.

20 **Q.** And do you have a recollection why you identified that as  
21 an appropriate button for this purpose?

22 **A.** Simply that I was encouraging the team to find a graphic  
23 button that users would readily recognize and help to make it  
24 safe for use when they clicked on it that they were -- had a  
25 high likelihood that they understood they were linking outside

1 of an app.

2 Q. Thank you, Mr. Schiller.

3 We can go back to Exhibit CX003, which was the Apple  
4 materials, and specifically page .5.

5 (Exhibit published.)

6 BY MR. PERRY:

7 Q. Mr. Bornstein asked you some questions about the system  
8 disclosure sheet. Do you recall that?

9 A. Yes.

10 Q. This image is the final one adopted by Apple, correct?

11 A. Yes, it looks to be.

12 Q. In your view, Mr. Schiller, and given your position at  
13 Apple, is there anything misleading about the information  
14 provided here?

15 A. No.

16 Q. Does the system disclosure sheet prevent developers from  
17 communicating options to users?

18 A. No.

19 Q. And in your view, does the system disclosure sheet help  
20 users make informed choices?

21 A. Well, it helps them to know they're leaving and going to  
22 another website and what that might occur in terms of where --  
23 how the purchases work.

24 I'm sure that's a -- I'm not sure if that's the same  
25 definition of an informed choice or not. I -- I don't know.

1 Q. Mr. Bornstein asked you some questions about some changes  
2 that were made to the system disclosure sheet during the  
3 Wisconsin project. Do you recall that?

4 A. Yes.

5 Q. Is it common for Apple to make changes along the way?

6 A. Yes.

7 Q. And can you describe a little bit about the changes that  
8 were made here? What do you recall?

9 A. My recollection is in that price committee meeting we had  
10 that summer, there was discussion about, as we read through  
11 the disclosure sheet, the fact that that second bold sentence  
12 that -- up on top was at the bottom of it in small text. And  
13 there was discussion about whether users would realize that  
14 they weren't -- when they linked out, that now things that  
15 they expected from an in-app purchase with Apple wasn't the  
16 case.

17 So there was concern that what was in small text at the  
18 bottom would not be understood and it should be bolded at top.  
19 I believe that was the dialogue that went on in the meeting.

20 Q. Thank you, Mr. Schiller.

21 If we can go back to CX2 which is the link entitlement.

22 (Exhibit published.)

23 BY MR. PERRY:

24 Q. And we were looking at the bullets in 3.3 which is on  
25 CX2.4.

1 Mr. Bornstein asked you some questions, if you'll recall,  
2 about placement within the app of the new link. Do you recall  
3 that?

4 A. Yes.

5 Q. And the last four bullets on this page basically, you  
6 know, describe that, correct?

7 A. Yes.

8 Q. That's the final decision Apple made.

9 A. I'm not sure what you mean "final decision."

10 Q. In other words, we looked at a number of decks that had  
11 iterations of possibilities. This is what was actually  
12 adopted?

13 A. Yes.

14 Q. Why were these requirements regarding the placement  
15 adopted by Apple?

16 A. We're trying to find a solution where developers can  
17 communicate their offers and help users link out to get them  
18 in a way that didn't also then interfere with in-app purchase  
19 and the process that was established once a user was starting  
20 to buy something in the app.

21 Q. And you just drew a distinction between communication and  
22 purchases. Did I understand that correctly? I'm sorry, I  
23 just might not have caught your answer.

24 A. I'm sorry. Then maybe my answer was too complex.

25 We're trying to both have a solution for developers to

1 communicate their offers but not interfere or confuse users of  
2 what is IAP and how that works.

3 Q. And why is that, Mr. Schiller?

4 A. Because I believe the ruling, as I understood it, allows  
5 IAP to still be the only method of in-app purchase. And so  
6 we're trying to not have that be broken by this process.

7 Q. And let me just pause on something you just said. You  
8 said the ruling, as you understood it. Have you spent -- I  
9 mean you said you read it. But have you spent time with this  
10 ruling, Mr. Schiller?

11 A. I've read it multiple times. We've certainly had many  
12 discussions internally about it. And so I'm not sure if that  
13 meets the definition of spent time with it or not. I don't  
14 know.

15 Q. Well, let me ask a more -- a better question, sir.

16 In developing these requirements, the various iterations  
17 that Mr. Bornstein went through today, what effect, if any,  
18 did you and the others at Apple give the language of the  
19 injunction and the ruling that accompanied it?

20 A. We've asked ourselves and -- and reread the language over  
21 and over again throughout the process of trying to come up  
22 with our compliance plan to understand how it mapped to that  
23 and met the needs of it or not. That happened frequently.

24 Q. And again you're not a lawyer, Mr. Schiller. Do you have  
25 a view as to whether the requirements that Apple ultimately

1 adopted for the link and so forth are consistent with the  
2 injunction and the ruling?

3 **MR. BORNSTEIN:** Objection, Your Honor, foundation.

4 **THE COURT:** Well, I'll take it for his understanding.

5 **THE WITNESS:** From the understanding I had and the --

6 **THE COURT:** Well, let me --

7 **THE WITNESS:** Sorry.

8 **THE COURT:** Just say to be clear, I take it from your  
9 understanding, but I don't think your attorney wants you to  
10 violate attorney-client privilege.

11 So if your view is only based on lawyer involvement, then  
12 you don't have one.

13 **THE WITNESS:** I would prefer to say what you said,  
14 Your Honor, which is my view is based on discussions with  
15 attorneys and I would prefer not to say what my view is  
16 independent of that.

17 **MR. PERRY:** I appreciate the clarification, Your  
18 Honor.

19 **Q.** And I apologize, Mr. Schiller, again for asking an  
20 inartful question.

21 Let's shift gears for a second and talk about the  
22 commission structure; is that all right?

23 **A.** Okay.

24 **Q.** All right. In May when we were here last, you  
25 testified -- do you recall this -- that there were -- before

1 the injunction there were two categories of transactions?

2 **A.** Yes.

3 **Q.** And then you testified, and I'm quoting, there's now a  
4 third class of transaction different from either the first or  
5 second that's -- previously that starts in the app and links  
6 out to pay on the website and come back to the app.

7 Am I --

8 **A.** That is correct, I said that.

9 **Q.** Okay. Situate us where we were.

10 Did Apple change anything about the first two categories  
11 of transactions, in your taxonomy --

12 **A.** No.

13 **Q.** -- as part of this --

14 And how does the third class of transactions then relate  
15 to this injunction compliance program?

16 **A.** Well, I think this program is all about that third class  
17 of new transactions that start in the app and then go to a  
18 website.

19 **Q.** Now, Mr. Bornstein showed you several decks that had a  
20 no-commission option, a commission option, three commission  
21 options, different commission options. How did -- can you  
22 explain how that came about at Apple in the middle of 2023?

23 **A.** There were many explorations of what a range of options of  
24 providing a compliance plan for the injunction that involved  
25 many variables, whether there was a commission or not a

1 commission, whether the commission is any different, whether  
2 there were rules around the links. So all of that was -- we  
3 spent all our time discussing and considering different  
4 options.

5 **Q.** So we are at a disadvantage, Mr. Schiller, doing  
6 archeology with these decks. How much time -- do you have an  
7 estimate of how much time the meetings and the work and the  
8 preparation and so forth went into this discussions of the  
9 commission leading up to that July meeting?

10 **A.** Typically, on most weeks, we had a weekly meeting where  
11 the App Store team, with some of the finance team, some of the  
12 legal team, would talk and work on just this or this and other  
13 things. The meetings would vary. Some weeks we had more than  
14 one meeting.

15 And, yes, there were some weeks with no meeting, but for  
16 the most part there were meetings every week.

17 And the -- it began in 2021. Mostly then with other --  
18 other topics. And then in '23, really became meetings all  
19 about this. There was much work on the team in between those  
20 meetings, nights, weekends. It was -- it was a -- to give you  
21 one bit of flavor for it, very complex in the sense that we  
22 would sit in a meeting, let's say it was on a Wednesday and  
23 say, hey, do we consider this different way of calculating it,  
24 did we consider this historical data to get a better model  
25 here.

1 And we want the team by the following week to have figured  
2 that out and come back with an update to show us. And so they  
3 would spend all week and weekend trying to create that work  
4 for us.

5 So that was a typical time. I don't know how to add up  
6 all those hours, but that's what we did.

7 Q. And do you know whether those meetings, those periodic  
8 meetings, were recorded in some way?

9 A. I'm not -- I do not believe they were.

10 Q. Not recorded. Were notes taken?

11 A. Some of those meetings had notes taken by some others, not  
12 by me, but some others. I can't be specific. I don't know.

13 Q. Well, let me just show you one document, Mr. Schiller.

14 If you look in your binder, it's CX1104.

15 A. (Reviewing document.)

16 MR. PERRY: And this can be published, Your Honor.

17 THE COURT: You may.

18 (Exhibit published.)

19 BY MR. PERRY:

20 Q. Do you recognize this document, Mr. Schiller?

21 A. I'm sorry, no, I don't.

22 Q. Did you personally receive the notes of these meetings  
23 that you just testified about?

24 A. I -- I did. I often didn't look at them.

25 Q. Okay.

1     **A.** Because I was in the meeting. And so to read notes about  
2     the meeting that I was just in, it was just not a good use of  
3     my time. So I got these but I rarely read them.

4     **Q.** Let's take a look at this one under Notes. And again I'm  
5     not going to ask you to read it out loud, just see if you  
6     remember this meeting.

7             Do you see that first sentence?

8     **A.** (Reviewing document.)

9     **Q.** About the compliance date?

10    **A.** Oh, sorry, I was looking at a different section of it. I  
11    apologize.

12                     (Exhibit published.)

13             **THE WITNESS:** Yes, I -- I recall that being said. I  
14    don't know which meeting and all of that, but I recall it  
15    being stated.

16    **BY MR. PERRY:**

17    **Q.** And do you remember getting these specific notes, having  
18    looked at them for a minute or two?

19    **A.** I'm sure I did. I just don't recall sitting here.

20    **Q.** All right. We'll leave that for another time,  
21    Mr. Schiller.

22             Did you receive notes periodically, however, even if you  
23    don't remember the one I just showed you?

24    **A.** Frequently, yes.

25    **Q.** And Mr. Bornstein showed you a document in which you

1 expressed, quote, unquote, issues with the commission. Do you  
2 recall that?

3 **THE COURT:** I take it you don't want 1104 admitted?

4 **MR. PERRY:** Your Honor, I'll move the admission and  
5 see what my colleague says.

6 **MR. BORNSTEIN:** Your Honor, we have no objection to  
7 1104.

8 **THE COURT:** All right. 1104 is admitted.

9 (Exhibit 1104 received in evidence.)

10 **MR. PERRY:** Thank you, Your Honor.

11 **Q.** Mr. Schiller, you were shown a document in which you  
12 expressed, quote, issues with the commission. Do you recall  
13 that?

14 **A.** I recall it being stated, yes.

15 **Q.** And I think you indicated that one of your issues was --  
16 well, I won't -- can you explain what your issues were with  
17 the commission in the middle of 2023?

18 **A.** I believe in response to the question, I explained I had  
19 issues more than just about determination of how it met  
20 compliance, but also I had great concerns about the collection  
21 of funds from developers, the change in the role of the App  
22 Store to now an organization that needs to collect money from  
23 developers.

24 I was concerned with the concept of developers, if they  
25 don't pay, how the App Store now needs to be some kind of a

1 collection agency and have rules around how we handle  
2 non-payment and whether ultimately it means we're going to  
3 have to do audits of developers to ascertain whether we were  
4 paid the proper amount or not.

5 And -- and ultimately how all of those things change the  
6 relationship between Apple and developers in a way that I  
7 thought would be detrimental to that relationship.

8 And so I had concerns about all of those things.

9 Q. And I think you mentioned you also had a concern about or  
10 a question about whether the commission -- how the commission  
11 fit with the ruling; is that correct?

12 A. Yes.

13 Q. And did that question get resolved for you? Let me just  
14 ask that way. Yes/no question.

15 A. Yes.

16 Q. Can you answer any further in light of the observation Her  
17 Honor made a few minutes ago?

18 A. No, it's the same answer --

19 Q. Thank you.

20 A. -- as previous.

21 Q. Thank you, Mr. Schiller.

22 Mr. Schiller, let's look at one more document and this is  
23 the injunction itself, CX1313.

24 MR. PERRY: Your Honor, I don't think we've moved  
25 into evidence. It's a court document obviously, but we'd move

1 it in just so it has an exhibit number.

2 **THE COURT:** Which one is this?

3 **MR. PERRY:** It's the permanent injunction, Your  
4 Honor, 1313.

5 **THE COURT:** Okay. Any objection?

6 **MR. BORNSTEIN:** I have no objection to the admission  
7 of Your Honor's order.

8 **THE COURT:** I can take -- well, this way we have a  
9 number. But I can take judicial notice of it.

10 **MR. PERRY:** Agreed, Your Honor. Several of the other  
11 orders have exhibits already so we thought it might be easier  
12 just to have a number.

13 **THE COURT:** I don't know that I like the number 1313.  
14 But go ahead.

15 **THE WITNESS:** The same thought had crossed my mind.

16 **MR. PERRY:** All right. To be a clear, the parties  
17 have an agreed numbering system that spits them out randomly,  
18 Your Honor. Or not randomly, but they start at a particular  
19 number. There's no significance to 1313.

20 **Q.** Mr. Schiller, I think you testified earlier you have  
21 personally read the injunction.

22 **A.** Yes.

23 **MR. PERRY:** Mr. Montgomery, can we blow up  
24 paragraph 1.

25 (Exhibit published.)

1 **BY MR. PERRY:**

2 **Q.** You played a significant role, Mr. Schiller?

3 **THE CLERK:** Your Honor, are we publishing?

4 **THE COURT:** Yeah, that's fine. It's in the public  
5 realm.

6 (Exhibit published.)

7 **BY MR. PERRY:**

8 **Q.** You played a significant role in this injunction  
9 compliance project, as we've testified for many hours already,  
10 correct?

11 **A.** Yes.

12 **Q.** Did you keep the injunction in mind, you personally,  
13 Mr. Schiller, during that process?

14 **A.** Yes.

15 **Q.** And again, with the Court's reminder in mind, without  
16 revealing attorney-client privileged communication, do you  
17 personally have a view as to whether the injunction compliance  
18 plan complies with the injunction? The injunction, not the  
19 ruling. I'm talking about the actual injunction.

20 **A.** It's probably easier, leave that to the same previous  
21 answer as before. I -- my understanding of how we meet this  
22 involves a tremendous amount of legal input and so I would  
23 rather not say the wrong thing on that.

24 **Q.** All right. But you do know about the guidelines, right,  
25 Mr. Schiller?

1       **A.** Yes.

2       **Q.** All right. Let's come back to where you're not a lawyer,  
3 we got that right?

4       **A.** That's right.

5       **Q.** But you are a guidelines person?

6       **A.** Yes.

7       **Q.** All right.

8               **MR. PERRY:** Mr. Montgomery, if we could put up  
9 CDX1001-2.

10                               (Exhibit published.)

11       **BY MR. PERRY:**

12       **Q.** And, Mr. Schiller, this was a demonstrative that you  
13 helped prepare for your testimony in May, but I don't think we  
14 actually used it in May. Do you recall that?

15       **A.** I do recall that.

16       **Q.** What is being shown on here, if you recall, having helped  
17 prepare it nine months ago.

18       **A.** Yes. It simply shows in the first column language of the  
19 two major sections of the injunction. And then what, at the  
20 time of the trial, was our guideline language that I believe  
21 that may have been referring to. And then the change in the  
22 guidelines on the far right column as a result of that.

23       **Q.** And I'd like to ask you a guidelines question, not a legal  
24 question. Do you understand the distinction, having looked at  
25 this document, Mr. Schiller?

1       **A.** I believe I do.

2       **Q.** All right. The injunction says that Apple may not --  
3 shall not prohibit developers from including buttons, external  
4 links, or other calls to action. Do you see that?

5       **A.** Yes.

6       **Q.** Okay. Today, under the guidelines, the new guidelines,  
7 the link entitlement, does Apple prohibit developers from  
8 including buttons?

9       **A.** No.

10      **Q.** Today, under the new guidelines and external -- U.S. link  
11 requirement, does Apple prohibit developers from including  
12 external links?

13      **A.** No.

14      **Q.** And today, under the new guidelines and the external link  
15 requirement, does Apple prohibit developers from using --  
16 including other calls to action?

17      **A.** No.

18      **Q.** Today, Mr. Schiller, in your perspective, in your  
19 involvement in the App Store since its founding, do developers  
20 have more options to communicate with users or fewer than they  
21 did at the time of trial?

22      **A.** More.

23               **MR. PERRY:** No further questions, Your Honor.

24               **THE COURT:** Any reexam?

25               **MR. BORNSTEIN:** May I proceed, Your Honor?

1           **THE COURT:** You may.

2           **MR. BORNSTEIN:** Thank you.

3                           **REDIRECT EXAMINATION**

4           **BY MR. BORNSTEIN:**

5           **Q.** All right. Mr. Schiller, I'm going to try to be  
6 relatively brief on this one.

7           First of all, you had a couple of questions near the  
8 beginning of your examination about your use of the privileged  
9 and confidential legend. Do you recall that?

10          **A.** Yes.

11          **Q.** And you testified to Mr. Perry that you're not responsible  
12 for putting it on the decks, right?

13          **A.** Correct.

14          **Q.** And you testified that when you send emails, you try not  
15 to break attorney-client privilege when somebody else has put  
16 it on there, correct?

17          **A.** Correct.

18          **Q.** But we've seen emails today, sir, where you started the  
19 privileged and confidential labeling, haven't we?

20          **A.** Yes, I think there were some.

21          **Q.** Right. Exhibit 229, for example, you made the decision?

22                   **MR. BORNSTEIN:** We can put that on the screen. It's  
23 in evidence.

24          **Q.** You made the decision --

25   (Exhibit published.)

1           **THE COURT:** It can be published.

2           **BY MR. BORNSTEIN:**

3           **Q.** -- on the last page of the exhibit, which is the first in  
4 time, to start this exchange with the privileged and  
5 confidential attorney-work product label. Correct?

6           **A.** Yes.

7           **Q.** Okay. You had some questions from Mr. Perry about the  
8 exchange you had with Mr. Oliver about the reliability of the  
9 data he was using or his team was using to estimate the  
10 percentage of transactions that users would engage in after  
11 clicking the link.

12           Do you recall those questions from Mr. Perry?

13           **A.** Yes, I do.

14           **Q.** And he asked you if you had a response from the team that  
15 satisfied you at the time. Do you recall that?

16           **A.** Yes.

17           **Q.** And you said you did?

18           **A.** Correct.

19           **MR. BORNSTEIN:** Can we look, please, at Exhibit 279,  
20 which is in evidence.

21                               (Exhibit published.)

22           **BY MR. BORNSTEIN:**

23           **Q.** And if we look right on the page we're on, .1,  
24 Mr. Schiller, in the middle of the page, and I can wait till  
25 you get there.

1     **A.** I am there. Thank you.

2     **Q.** Okay. In the middle of the page, you write back to  
3     Mr. Oliver, "I'm not confident that the internal data you're  
4     using to estimate time duration is a reliable proxy for  
5     linking out." And you make a suggestion about a change that  
6     should be made on the slide. Right?

7     **A.** Yes.

8     **Q.** Okay. And the response that you get that Mr. Perry asked  
9     you about that comes back to you from Mr. Oliver is just,  
10    "Thanks, Phil. We will adjust those slides accordingly."  
11    Correct?

12    **A.** That's right.

13    **Q.** But Mr. Oliver did not give you any substantive defense or  
14    explanation regarding the reliability of the data that he was  
15    using in his slides; is that right?

16    **A.** Not in this email, but we had a follow-up meeting about  
17    it.

18    **Q.** Okay. We also had some questions just recently -- sorry.  
19       Do you remember when that follow-up meeting was?

20    **A.** I don't. I remember the discussion with the team working  
21    on it. And we talked at length. I raised this again and said  
22    I'd like to understand where your confidence level is on this.  
23    And they talked for a bit with me about the correlation  
24    between it and the links out and why the confidence was high  
25    on it, and we had a pretty full discussion about it.

1 Q. And so the people who are knowledgeable and who you relied  
2 were Mr. Oliver and Mr. Roman on this issue, correct?

3 A. I believe Mr. Timo Kim and Mr. Nate Burton [sic] may have  
4 been ones who talked about in the meeting more at that time.

5 Q. All right. And we had testimony from Mr. Oliver and  
6 Mr. Roman on this subject, though, in May, correct?

7 A. I'm sorry, I don't recall that.

8 Q. Okay. The record will be what it is.

9 Let's take a look -- sorry -- turn to questions that you  
10 got recently from Mr. Perry about compliance with the  
11 injunction.

12 MR. BORNSTEIN: And we can put on the screen  
13 Exhibit -- I hate to say it, Your Honor -- 1313 --

14 THE COURT: Go ahead.

15 MR. BORNSTEIN: -- which is the order.

16 THE COURT: Well, the one page following the 185,  
17 yes. Go ahead. You can put it on.

18 MR. BORNSTEIN: Thank you, Your Honor.

19 (Exhibit published.)

20 BY MR. BORNSTEIN:

21 Q. And you were asked the question whether following on the  
22 injunction talks about links, buttons, and other calls to  
23 action, correct?

24 A. Yes.

25 Q. And you were asked whether currently under the entitlement

1 program that Apple launched developers can include links,  
2 correct?

3 A. Yes.

4 Q. And they can, right?

5 A. Correct.

6 Q. Subject to all of the rules that we've all been talking  
7 about for a long time that Apple has published, correct?

8 A. Yes.

9 Q. And you were asked about whether developers can include  
10 buttons, correct?

11 A. Yes.

12 Q. The only buttons developers can include are ones that  
13 satisfy the plain button style as Apple defines it, correct?

14 A. That and the square button with the arrow out of it.

15 Q. Correct. So there's no -- there are a variety of  
16 different buttons in Apple's human interface guidelines and  
17 available button styles that Apple makes available for  
18 developers to use, correct?

19 A. That's right.

20 Q. And there's a limitation that the only one allowed here  
21 under the entitlement program is the one that looks like a  
22 link plus the little square and the arrow, correct?

23 A. Yes.

24 Q. Okay. And that was a deliberate decision because you  
25 wanted it to look more like a link, correct?

1 A. Correct.

2 Q. All right. And then you were asked about whether you  
3 could have other calls to action, by Mr. Perry, and you said  
4 you could, right?

5 A. Yes.

6 Q. What other calls to action does Apple permit under the  
7 entitlement program besides links and buttons?

8 A. Well, as I explained, that's the language that can be used  
9 with the link, dollars off, percent off, deals on their  
10 website, that language is the call to action.

11 Q. But you can't, under the entitlement program, as a  
12 developer you are not permitted to have a call to action  
13 unless you also have a link or what Apple calls a button,  
14 correct?

15 A. That's right.

16 Q. You're not allowed as a developer to just say 50 percent  
17 off on my website and -- and identify the website but not have  
18 a link, correct?

19 A. That's right. We discussed this in -- back in May when I  
20 was on the stand. And as I said then and again I'll say now,  
21 which is we didn't consider when we wrote this the -- that a  
22 developer would want to not include a link with their call to  
23 action, and that if an outcome of this is that we need to  
24 change the language such the developer could choose to make a  
25 call to action without a link, of course that's something we'd

1 be happy to consider. It just hadn't crossed our mind that  
2 somebody would want that.

3 Q. Okay. You were asked a couple of questions about the  
4 concerns that you had about charging a commission. Do you  
5 recall that?

6 A. Yes.

7 Q. And I just want to do a little bit of a list. You told me  
8 that one concern was whether or not it actually would comply  
9 with the Court's order, correct?

10 A. Yes.

11 Q. And one concern was the effect of the fact that there  
12 might be compliance problems on a developer side in terms of  
13 not paying and what that might mean for the App Store,  
14 correct?

15 A. Yes.

16 Q. There were also conversations at Apple in which you  
17 participated in which people expressed concerns that it would  
18 be problematic for Apple to be seen to be charging on the web,  
19 on web transactions. Do you recall that?

20 A. Vaguely. I don't remember the specifics but --

21 Q. All right.

22 A. -- yes.

23 Q. Let's take a look at Exhibit 1104. It's one that  
24 Mr. Perry showed you. It's in evidence.

25 Do you have that?

1 A. Yes, I do.

2 Q. And if you --

3 THE COURT: I think you may be -- are you having  
4 technical difficulties? Because you --

5 (Off-the-record discussion.)

6 THE COURT: It's up on our side. It's just not up on  
7 your side.

8 MR. BORNSTEIN: I'm prepared to keep going if  
9 Mr. Lyon --

10 THE COURT: Go ahead.

11 BY MR. BORNSTEIN:

12 Q. So, Mr. Schiller, these are, as they're labeled, notes  
13 from a June 1 meeting regarding the Wisconsin project,  
14 correct?

15 A. Yes.

16 Q. And as we saw earlier in Exhibit 485, 485, there was a --  
17 a June 1 meeting with Mr. Cook regarding Wisconsin, correct?

18 (Exhibit published.)

19 THE WITNESS: Yes.

20 BY MR. BORNSTEIN:

21 Q. All right. And if you look about three-quarters of the  
22 way down, you can see notes regarding one issue on this  
23 meeting. "This might be perceived like we're trying to charge  
24 for what happens on the Internet."

25 Do you see that?

1     **A.** Sorry. No. I'm looking for it.

2                     (Simultaneous colloquy.)

3             **THE WITNESS:** Yes. Thank you.

4     **BY MR. BORNSTEIN:**

5     **Q.** All right. And so this was one of the things that people  
6     talked about at Apple was a concern for proceeding with the  
7     commission, correct?

8     **A.** (Reviewing document.)

9             I believe I recall vaguely a discussion about that. I  
10     don't remember the specifics, and I don't remember these  
11     notes.

12    **Q.** Okay. Was there also discussion at Apple that you  
13    participated in expressing concern about charging a commission  
14    on external purchases when Apple doesn't charge a commission  
15    on purchases made through advertisements in apps?

16    **A.** No, I don't recall that kind of a discussion.

17    **Q.** Okay. And on the subject of the other calls to action,  
18    where you said it didn't occur to Apple that people might want  
19    to have just a textual statement without a link, did it not  
20    occur to you that developers might want to have just a textual  
21    statement without a link if it would save them the 27 percent  
22    commission they would pay by going through the link?

23    **A.** No. I don't recall us discussing that. And to my  
24    recollection, we just didn't think about that option in  
25    working on the compliance plan.

1 Q. As you sit here now, though, doesn't -- doesn't that make  
2 sense that some developers might very well say I'd like to  
3 have a textual statement that tells people they can go to my  
4 website without a link if it saves them a 27 percent  
5 commission?

6 A. Somebody might, yes.

7 Q. Okay. Almost done.

8 You were asked, looking at Exhibit 1104, you were asked  
9 questions about whether notes were taken at meetings regarding  
10 compliance with the Court's injunction. Do you recall that?

11 A. Yes.

12 Q. And you said notes were sometimes taken and you didn't get  
13 them sometimes, but there would be notes of at least some  
14 meetings, correct?

15 A. Yes.

16 Q. Are you aware that at least as produced to us by Apple,  
17 there are no notes of any meeting between December 2021 when  
18 Project Michigan was put on hold and April 2023 when the Ninth  
19 Circuit issued its opinion regarding work on the U.S.  
20 injunction compliance project?

21 A. I am not aware of that.

22 Q. Okay. You were also asked some questions about whether  
23 any of the decks in 2023 that you and I talked about this  
24 morning reflected final decisions by Apple, correct?

25 A. Yes.

1 Q. And you said they did not reflect final decisions, right?

2 A. Correct.

3 Q. And that was a deliberate decision by Apple, as we talked  
4 about this morning, not to finalize its deck or finalize its  
5 decision until days before it had to comply. Correct?

6 A. Well, that's the normal price committee process, is until  
7 we are ready to go with a product, if we can delay the  
8 decision on pricing as late as possible to make sure we've  
9 considered anything that could occur or any changes in any  
10 calculation or anything, don't make it final if it doesn't  
11 have to be final yet.

12 Q. And is it the normal price committee process to label all  
13 of the decks privileged and confidential up until the very  
14 last one when you take that label off?

15 A. I'm not sure.

16 MR. BORNSTEIN: All right. No further questions,  
17 Your Honor.

18 THE COURT: On that last document, if --  
19 (Exhibit published.)

20 THE COURT: Am I reading this right that everyone  
21 agreed that you were not charging -- three lines down from the  
22 highlight -- that you are not charging, we don't charge for  
23 it, that you all understood and agreed that you don't charge  
24 for things that happen on the Internet?

25 THE WITNESS: Agreeing that when developers make --

1 before -- before the compliance plan, that anything that  
2 occurs on the Internet, there is no Apple commission on  
3 Internet purchases, that is true. And that is still the case  
4 today.

5 **THE COURT:** Well, that's not the case with the  
6 tracking.

7 **THE WITNESS:** With this new -- right, from the  
8 linking out, correct.

9 **THE COURT:** And then on the next page, there at the  
10 bottom, there also seemed to be an indication that you needed  
11 to quantify the value and tie it to the commission rate, that  
12 you understood that? Right above attorney-client privilege,  
13 fifth line.

14 **THE WITNESS:** Yes, I see that.

15 **THE COURT:** And yet there's been no production thus  
16 far of documents that show that.

17 **THE WITNESS:** I believe this is referring to the same  
18 analyst report work that was going on to understand from a  
19 bottom's-up the value of -- of the commission and the services  
20 Apple provides.

21 **THE COURT:** Okay.

22 Anything on those questions?

23 **MR. BORNSTEIN:** No, Your Honor. Thank you.

24 **THE COURT:** Mr. Perry, anything else?

25 **MR. PERRY:** Nothing, Your Honor.

1           **THE COURT:** All right. At this time, Mr. Schiller,  
2           you now may talk to your lawyers. If they choose to put you  
3           back on the stand, that's their call. I won't excuse you yet.  
4           But you can talk to them.

5           **THE WITNESS:** Thank you, Your Honor.

6           **THE COURT:** All right. Next witness.

7           **MS. MOSKOWITZ:** Your Honor, Epic calls Rafael Onak to  
8           the stand.

9           **THE COURT:** Okay.

10          **MS. MOSKOWITZ:** Your Honor, may we approach with  
11          binders?

12          **THE COURT:** Yes.

13          **MS. MOSKOWITZ:** And I believe Your Honor has copies  
14          already provided for your copy.

15          **THE COURT:** All right. Thanks, Ms. Moskowitz.

16          **MS. MOSKOWITZ:** Thank you.

17          **THE COURT:** Do I have a witness?

18          If you'll please remain standing, and we'll swear you in.

19          **THE CLERK:** Please raise your right hand.

20

21                           **RAFAEL ONAK,**

22          called as a witness for the plaintiff, having been duly sworn,  
23          testified as follows:

24          **THE WITNESS:** I do.

25          **THE CLERK:** Please be seated. And speak clearly into

1 the microphone.

2 Please state your full name and spell your last name for  
3 the record.

4 **THE WITNESS:** My name is Rafael Onak, O-N-A-K.

5 **THE COURT:** All right. Good afternoon.

6 **THE WITNESS:** Good afternoon.

7 **THE COURT:** You may proceed.

8 **MS. MOSKOWITZ:** Thank you, Your Honor.

9 **DIRECT EXAMINATION**

10 **BY MS. MOSKOWITZ:**

11 **Q.** Good afternoon, Mr. Onak.

12 **A.** Good afternoon.

13 **Q.** My name is Lauren Moskowitz. I represent Epic Games, and  
14 I'll be questioning you.

15 You are a UX writing manager at Apple, correct?

16 **A.** That's correct.

17 **THE COURT:** Ms. Moskowitz, hold on.

18 Could you either move closer to the mic or move that mic  
19 closer to you.

20 **THE WITNESS:** Yes, Your Honor.

21 **THE COURT:** Thank you. Let's try again.

22 **MS. MOSKOWITZ:** Should I start back at the prior  
23 question, Your Honor, or just keep going?

24 **Q.** You've been in that role of UX writing manager since April  
25 2003 -- 2023, excuse me, correct?

1 A. That's correct. Yes.

2 Q. And before that, you were a senior UX writer for Apple  
3 Services?

4 A. That's correct.

5 Q. And you had been in that role for six years approximately?

6 A. Yes.

7 Q. And UX means user experience?

8 A. Correct.

9 Q. And that role, that sort of job is to conceptualize, to  
10 design and create a user experience for Apple products, right?

11 A. Correct, yes.

12 Q. And one of the main goals of that job is to create  
13 products that are intuitive and useful to users, correct?

14 A. Correct.

15 Q. And as part of that work, you would agree that  
16 communication with users is important, right?

17 A. Absolutely.

18 Q. Words are important, right?

19 A. Yes.

20 Q. You choose words carefully.

21 A. I do.

22 Q. You are aware that over the last several years, Apple has  
23 been faced with a number of decisions in various jurisdictions  
24 to require it to offer to users ways to make purchases outside  
25 of IAP, correct?

1 A. Correct.

2 Q. And this Court's injunction that it issued in September of  
3 2021 is one of those decisions, correct?

4 A. Yes.

5 Q. And there was a decision in the Netherlands and a Japanese  
6 regulatory investigation that are also examples of that,  
7 correct?

8 A. I believe so. I'm not aware of the Japanese one. But  
9 yes.

10 Q. Are you familiar with changes to allow linkouts for reader  
11 apps that was sparked by a Japanese investigation?

12 A. I'm aware of the reader one, yes.

13 Q. Okay. But you don't draw a connection in your mind to  
14 Japan for that?

15 A. I don't, no.

16 Q. All right. We'll see if we can help with the project name  
17 that might help with that, but I'm not allowed to say that out  
18 loud so we'll give that a moment.

19 One of the ways that Apple chose to comply with these  
20 various decisions that we were just talking about was to offer  
21 developers the ability to include linkouts to their websites  
22 from within the app, correct?

23 A. That's correct.

24 Q. And in the U.S., that's the only choice that Apple has  
25 allowed developers to have for how it chose to comply with the

1 injunction, right?

2 A. I believe so, but I can't say for certain.

3 Q. You haven't worked on any other methodology, correct?

4 A. That's correct.

5 Q. And to your knowledge, there is none, right?

6 A. Correct.

7 Q. And so from 2021 to 2024, you were part of the team that  
8 worked on designing the user interface that would be used for  
9 complying with the various requirements from those decisions  
10 to allow linkouts to the web, correct?

11 A. Correct.

12 Q. And I'm just going to give you a few other names and --  
13 and confirm that they were also part of that same team.

14 Brandon Mihai, was he part of that team?

15 A. Yes.

16 Q. And Joe Phillips, was that part of that team?

17 A. Yes.

18 Q. And Josh Elman?

19 A. Yes.

20 Q. And Terry Liu?

21 A. Yes.

22 Q. Those were all user experience or design folks that were  
23 part of that team working on that project with you?

24 A. Correct.

25 Q. And the executive team responsible for this work, from

1 your perspective, included Mr. Schiller, for example?

2 A. Correct.

3 Q. And did it also include Tim Cook?

4 A. I'm not sure if Mr. Cook was involved.

5 Q. Okay. You didn't have any direct interaction with him?

6 A. I did not, no.

7 Q. But you did have direct interaction with Mr. Schiller,  
8 correct?

9 A. I was involved in a few meetings with Mr. Schiller, yes.

10 Q. But you understood from your perspective that Mr. Schiller  
11 was the decision-maker on these issues?

12 A. Correct.

13 Q. And so your role, in particular, in the various projects  
14 that we've just been discussing was to help design and draft  
15 the specific language that would be used for screens that the  
16 users would be presented with when they were proceeding  
17 through the flow to link out to the web, right?

18 A. That's correct.

19 Q. So I just want to try to walk through a little bit of the  
20 timeline and some of the terminology up front. We just  
21 mentioned the -- this Court's injunction from September 2021.  
22 You're familiar with that?

23 A. Yes.

24 Q. Did you read it at the time?

25 A. I did not, no.

1 Q. Have you subsequently read it?

2 A. I'm sure I've taken a look at it, yes.

3 Q. Okay. Do you have any sense of when you may have taken a  
4 look at it?

5 A. I do not, no.

6 Q. Do you believe that you looked at it at the time you were  
7 designing language as part of Apple's compliance work?

8 A. I don't believe that was my intention, no.

9 Q. Did you have an understanding, even if you hadn't looked  
10 at it, that the injunction prevented Apple from prohibiting  
11 developers from including buttons, external links, or other  
12 calls to action that direct customers to purchasing mechanisms  
13 beyond IAP?

14 A. I was not aware of those details, no.

15 Q. You are aware that Apple began its work on complying, or  
16 at least on its response to the injunction, shortly after it  
17 was issued in September 2021; is that your understanding?

18 A. I'm not sure when Apple started working on it. All I know  
19 is when I was brought into the project.

20 Q. And when was that?

21 A. I believe for Project Michigan, I started working in --  
22 sometime in 2021.

23 Q. So sometime -- do you have any ballpark on when that was?  
24 October sound right? November?

25 A. I'm really not sure. Maybe mid, early that year.

1 Q. That month or year?

2 A. Year. 2021.

3 Q. Okay. The injunction was issued in September 2021. So do  
4 you have any sense for when, in the remaining months of 2021,  
5 you became involved?

6 A. I -- I can't remember but must have been after that.

7 Q. Okay. Are you -- and you mentioned Michigan. That's your  
8 understanding of the code name that was used internally within  
9 Apple to describe the work that was kicked off following the  
10 injunction's issuance in September 2021, correct?

11 A. Correct.

12 Q. And do you recall that a couple months later, the  
13 injunction was stayed by another court that basically told  
14 Apple it did not yet have to comply while further proceedings  
15 took place?

16 A. I was not aware of that, no.

17 Q. If you didn't understand that, did you at least come to  
18 understand that the work was -- that was going to be done to  
19 respond to the injunction was put on hold in December of 2021?

20 A. I was not aware of that either.

21 Q. Do you remember pausing your work at some point at the end  
22 of year in 2021?

23 A. I don't remember. We -- we pause a lot of projects at  
24 Apple for a lot of different reasons.

25 Q. Okay. So you just don't have a recollection at all on

1 being told pencils down on that, you'll do other work?

2 A. Correct.

3 Q. So I take it you don't recall picking back up work for the  
4 compliance with the United States injunction?

5 A. I -- I remember we did pick it up obviously, but I -- I  
6 don't remember when that was.

7 Q. And separate from not remembering when, do you have a  
8 recollection that there was a pause period for the work being  
9 done on the U.S. injunction, including a change in project  
10 name as a result?

11 A. I don't remember specifics about that, no.

12 Q. Okay. Do you remember the code name that was used for the  
13 second part of the work?

14 A. I believe so, but I'm not sure which part you're referring  
15 to.

16 Q. Okay. Well, what -- what do you think it is?

17 THE COURT: Hold on. Is this something --

18 MS. MOSKOWITZ: No, sorry, this is the U.S. one. But  
19 maybe I'll just ask -- I'll use the word to make sure we don't  
20 mess up.

21 Q. Is Wisconsin what you're thinking about?

22 A. Yes.

23 Q. Okay.

24 A. Project Wisconsin is one that I worked on.

25 Q. Okay. So without using names for other projects, Michigan

1 and Wisconsin are the only ones that we're able to say. So I  
2 just want to make sure you have that in mind because there  
3 were code names for other projects you worked on, for example,  
4 for the Netherlands, correct? Without saying it.

5 **A.** That's correct.

6 **Q.** Okay. And the Netherlands work was referring to the work  
7 that was done in response to the Netherlands Authority for  
8 Consumers and Markets decision against Apple, correct?

9 **A.** I -- I believe so, yes.

10 **Q.** You understood generally that that ACM, the Authority for  
11 whatever I just said, Consumers and Markets, had issued a  
12 ruling that Apple had to make changes to allow alternative  
13 purchase mechanisms for dating apps, correct?

14 **A.** That's correct.

15 **Q.** And you understood that one of the ways Apple chose to  
16 comply with that was to offer a linkout, ability for  
17 developers to present a linkout to web purchases for those  
18 dating apps in the Netherlands, correct?

19 **A.** Correct.

20 **Q.** And do you recall starting work on that in approximately  
21 January of 2022?

22 **A.** I don't remember specifically, but that sounds about  
23 right.

24 **Q.** And -- and you were part of the team that worked on the  
25 language and the screens that would be presented to users for

1 that Netherlands project, right?

2 A. Correct.

3 Q. And I mentioned the Japanese project. You don't recall  
4 specifically for Japan, but you do recall being involved in a  
5 project of developing language for screens that would be  
6 presented to users who were linking out for reader apps; is  
7 that correct?

8 A. That's correct.

9 Q. And that was to be implemented worldwide, right?

10 A. I believe so. I'm not sure, though.

11 Q. And do you recall starting that work in January of 2022?

12 A. I don't remember specifically.

13 Q. Do you recall, if you don't remember the specific time  
14 period, basically working on those two projects, the one being  
15 the Netherlands linkout and the second being the linkout for  
16 reader apps, happening at the same time, overlapping?

17 A. Yes. Yeah, I think so.

18 Q. And do you recall, however, that when you were working on  
19 the Netherlands and the reader app projects, that you were not  
20 at the same time working on the United States injunction  
21 compliance?

22 A. I -- I believe so, yes.

23 Q. You believe that my description was correct that you were  
24 not working simultaneously on the U.S. injunction?

25 A. I -- I can't remember.

1 Q. Okay. I'm just making sure. There was a double negative.  
2 So I just want to get your best understanding. Is it your  
3 best recollection that while you were working on the  
4 Netherlands and the reader app projects, that you were not  
5 simultaneously working on the U.S. injunction compliance?

6 A. I -- I can't remember if I was or --

7 Q. No recollection one way or the other?

8 A. No.

9 Q. Okay. So let's go back to the work that when you first  
10 became involved in Project Michigan, which is the U.S.  
11 injunction compliance that you believe started sometime after  
12 the issuance in September 2021, right?

13 A. Correct.

14 Q. So when you first got involved, had it already been  
15 decided that Apple would comply or seek to say it was  
16 complying by offering a linkout to users to follow to make an  
17 external purchase on the web?

18 A. I'm -- I'm not sure what Apple thought. I was just, you  
19 know, tasked with -- to create language for the -- for a  
20 system disclosure sheet at that time.

21 Q. Okay. And the system disclosure sheet that you were  
22 tasked to help design and draft was presented to you as a  
23 screen that would be shown to users after clicking on a link  
24 to go to an external website?

25 A. Correct.

1 Q. So let's -- let's level set.

2 MS. MOSKOWITZ: If you could please publish CX0003,  
3 which is in evidence and .5.

4 (Exhibit published.)

5 BY MS. MOSKOWITZ:

6 Q. And on the bottom here, we'll just blow that up a little  
7 bit, is it your understanding that this is the final language  
8 and the final screen that Apple arrived at for the linkout  
9 entitlement program for the U.S.?

10 A. Yes.

11 Q. And you were involved in the design of that screen?

12 A. I was, yes.

13 Q. And you were involved in drafting the language that  
14 appears on this screen?

15 A. Correct.

16 Q. And that included working with Mr. Schiller directly on  
17 the word choice for this screen.

18 A. I wouldn't say I worked with Mr. Schiller directly, no.

19 Q. You got feedback directly from Mr. Schiller from time to  
20 time on the language that would be used in this screen,  
21 correct?

22 A. Correct, yes.

23 Q. All right.

24 Let's please turn in your binder. So before I put things  
25 on the screen I'm going to ask you to look at them in the

1 binder first. This is CX520.

2 And I'll just -- let me know when you're there, please.

3 **A.** (Reviewing documents.)

4 Okay.

5 **Q.** This is a document, the -- the metadata which is the sort  
6 of title and underlying information we get from your lawyers,  
7 say that the title of this document is Michigan V3, and it's  
8 dated November 15, 2021.

9 Does that look right to you?

10 **A.** (Reviewing document.)

11 I'm sorry if -- I don't know, I'm not sure if I'm looking  
12 at the right thing here.

13 **Q.** Is the first page App Store Michigan IAP links?

14 **A.** Yes.

15 **Q.** Okay. Does this look familiar to you?

16 **A.** I believe so.

17 **Q.** Okay.

18 **MS. MOSKOWITZ:** Your Honor, I didn't include it in  
19 the document, but may I approach and hand up the metadata  
20 sheet just to see if this helps.

21 **THE COURT:** I don't know what it's supposed to help.  
22 But go ahead, you can.

23 **MS. MOSKOWITZ:** Thank you.

24 **THE WITNESS:** Thank you.

25 / / /

1 **BY MS. MOSKOWITZ:**

2 **Q.** Sir, you see on the custodian list that your name is  
3 listed as having this document in your files?

4 **A.** Yes.

5 **Q.** And the date been the file name indicates November 15,  
6 2021, Michigan V3. Do you see that?

7 **A.** I do, yes.

8 **Q.** Does this help you understand that this document is a  
9 presentation that you were involved with as part of Project  
10 Michigan from mid-November?

11 **A.** Yes.

12 **MS. MOSKOWITZ:** Okay. Your Honor, I move 520 into  
13 evidence.

14 **MR. WESNESKI:** No objection.

15 **THE COURT:** It's admitted.

16 And who was that?

17 **MR. PERRY:** That's Mr. Wesneski, Your Honor, who will  
18 be handling this witness.

19 **THE COURT:** Okay. Thank you.

20 (Exhibit 520 received in evidence.)

21 **BY MS. MOSKOWITZ:**

22 **Q.** All right. Mr. Onak, you worked on this deck, correct?

23 **A.** I'm not sure if I worked on it, but I think it was -- may  
24 have been sent to me.

25 **Q.** Okay. Well, let's -- let's look at it, and we'll -- we'll

1 come back to that question in a bit.

2 If you could go to page .2, there's an overview slide.

3 Do you see that?

4 **A.** I do, yes.

5 **Q.** And there are three points in here. The first one says  
6 allow developers to linkout to a website featuring alternate  
7 payment methods. Do you see that?

8 **A.** I do, yes.

9 **Q.** Do you understand that that was one of the requirements of  
10 the injunction?

11 **A.** I believe so, yes.

12 **Q.** And the point being that developers had to be allowed to  
13 offer users an alternative payment other than IAP, right?

14 **A.** Correct.

15 **Q.** And the second bullet here says allow developers to  
16 communicate the benefits of buying on the web.

17 Do you see that?

18 **A.** Correct.

19 **Q.** Did you understand that also to be a requirement of the  
20 injunction?

21 **A.** I was not aware of that, no, at that time.

22 **Q.** You didn't have an understanding that the whole idea was  
23 that developers were supposed to be able to offer users  
24 incentives to have competition among the various payment  
25 options?

1 A. I was not aware of that, no.

2 Q. Okay.

3 Do you recall seeing this in this deck or otherwise?

4 A. I don't remember.

5 Q. Let's look at number 3 then. This says the link must be  
6 detached from purchase buttons and placed elsewhere in their  
7 experience. Do you see that?

8 A. I do, yes.

9 Q. "Their" meaning users?

10 A. (Reviewing document.)

11 I believe so.

12 Q. Did you think this was part of the requirement of the  
13 injunction?

14 A. I was not aware of this either.

15 Q. Okay. You don't know where this requirement comes from?

16 A. No.

17 Q. Okay. So you have no understanding as to whether any of  
18 this is or is not within the injunction or is or is not within  
19 the spirit of the injunction?

20 A. No.

21 Q. That wasn't something that you viewed as important to  
22 complete your task?

23 A. No.

24 Q. All right. Let's look all the way -- I think it might, in  
25 fact, be the last page, .44.

1           **MS. MOSKOWITZ:** And we'll put it up on the screen too  
2 if that helps. I believe it's up there now.

3           (Exhibit published to witness, counsel, and the Court.)

4           **BY MS. MOSKOWITZ:**

5           **Q.** Do you see it?

6           **A.** I do, yes.

7           **Q.** The -- the title includes --

8           **A.** I'm sorry. It went away.

9           **MS. MOSKOWITZ:** Oh, did you touch it maybe?  
10 Sometimes that happens.

11           **THE WITNESS:** Oh, I see it now.

12           **BY MS. MOSKOWITZ:**

13           **Q.** You got it?

14           **A.** Yes.

15           **Q.** Great. The title includes the words "warning options."  
16 Do you see that?

17           **A.** Yes.

18           **Q.** This slide is discussing potential options for what users  
19 would be first shown as part of the linkout flow, correct?

20           **A.** I believe so, but I'm not sure.

21           **Q.** Well, is that how you understand it, looking at it?

22           **A.** Yes, this looks like an explore of -- of a design of  
23 something that we could create for the user, yes.

24           **Q.** Right. And so let's look at them.

25           So we have three boxes left to right. Let's start on the

1 left. The left is called "link" on the bottom.

2 Do you see that?

3 A. Yes.

4 Q. And the middle is called "dialogue," right?

5 A. Yes.

6 Q. And the right is called "sheet," right?

7 A. Yes.

8 Q. And the rightmost is -- sheet is a full screen takeover  
9 after the user clicks a link.

10 A. Correct.

11 Q. And the dialogue is a sort of small pop-up that would come  
12 up when a user clicked the link. That's another approach that  
13 was considered here.

14 A. Correct.

15 Q. And the -- the one all the way on the left is really just  
16 a link. You just go, right?

17 A. Yes.

18 Q. All right. So as we move left to right, the warning level  
19 to the users, that is being signaled to the users is going up,  
20 right?

21 A. I just believe you're -- as a user, you're -- you're  
22 getting more information from left to right, yes.

23 Q. Well, the -- you're being warned more. The warning  
24 options are getting more and more, saying to the user exercise  
25 more caution, right?

1 A. Yeah, you're -- as a user you're receiving more  
2 information and more facts, absolutely.

3 Q. Well, it's not just receiving more facts. It's warning  
4 them more about whether or not they want to proceed, right?

5 A. It's -- it's a warning to let them know what -- what's  
6 going to happen, yes.

7 Q. And ultimately Apple went with the sheet approach, the  
8 full-screen takeover, right?

9 A. Correct.

10 Q. The dialogue here, just for example, though, is  
11 communicating to the user that they would be going outside the  
12 app into the browser, right?

13 A. Correct.

14 Q. And that is communicating to the user that they are  
15 leaving the app, right?

16 A. Correct.

17 Q. But the dialogue approach was rejected by Apple, correct?

18 A. We ultimately decided to go in a different direction, yes.

19 Q. Were you part of that decision?

20 A. I was not, no.

21 Q. It was just communicated to you?

22 A. Yes.

23 Q. So let's talk about the language then that was arrived at  
24 ultimately for that full-screen takeover. If you could  
25 please -- and we'll come back to this -- but if you could

1 please turn to CX206 in your binder.

2 **A.** (Reviewing document.)

3 Okay.

4 **Q.** This is a series of messages among you, Mr. Mihai,  
5 Mr. Phillips, Mr. Elman, and some others on November 16, 2021.  
6 Do you see that?

7 **A.** I do, yes.

8 **MS. MOSKOWITZ:** Your Honor, I move CX206 into  
9 evidence.

10 **MR. WESNESKI:** No objection.

11 **THE COURT:** It's admitted.

12 (Exhibit 206 received in evidence.)

13 **MS. MOSKOWITZ:** All right. If we could put that up.

14 **Q.** And the first, just to orient us, the first message here  
15 is from Mr. Phillips. He says, "FYI, I have made a new  
16 version of Michigan V3." Do you see that?

17 **A.** I do, yes.

18 **Q.** Does that lead you to believe that you are discussing the  
19 deck that we were just looking at from 520?

20 **A.** Possibly, but I'm not sure. We -- we have a lot of  
21 different versions, a lot of different decks.

22 **Q.** Okay. So the title being "Michigan V3" in both doesn't  
23 lead you to believe that we're talking about the same deck?

24 **A.** No.

25 **Q.** Okay. Well, in any event, we will look at some of the

1 messages here.

2 But what you're -- what you're discussing in this chat  
3 exchange is workshopping language for the various options to  
4 be used for the full-screen takeover that would be used in a  
5 linkout scenario, right?

6 **A.** That's correct.

7 **Q.** And let's flip quickly back to 520, page 18.

8 (Exhibit published.)

9 **MS. MOSKOWITZ:** And let's just blow this up.

10 **Q.** This is a set of options, alternatives for what a  
11 full-screen takeover for the linkout could look like, right?

12 **A.** Correct.

13 **Q.** And do you remember that these were at one point options  
14 that were under consideration or drafting by you?

15 **A.** Yes, I believe these -- these were very early drafts.

16 **Q.** Okay. Well, early as in as of mid-November 2021?

17 **A.** I can't remember.

18 **Q.** Okay. Well, let's look on the left to the two options on  
19 the left, I guess A1 and A2. Do you see that on the bottom?

20 **A.** I do, yes.

21 **Q.** And the headline there is "continue to the developer's  
22 website." Do you see that?

23 **A.** I do.

24 **Q.** And the 2B options are open external website as the  
25 headline, right?

1 A. Correct.

2 Q. And "continue to the developer's website" is a fair  
3 description of what was going to be happening when a user  
4 clicked on an external link, right?

5 A. Personally, I didn't believe that it was an accurate  
6 description.

7 Q. You did not think it was accurate to tell users that they  
8 were going to be going to the developer's website?

9 A. In my opinion, we weren't able to tell if they were going  
10 to developer's website or not. We didn't know where they were  
11 going.

12 Q. Okay. So in your view, "open external website" was  
13 better?

14 A. Correct.

15 Q. Okay. And so let's go back to the chats we were just  
16 looking at, 206.

17 (Exhibit published.)

18 **BY MS. MOSKOWITZ:**

19 Q. And we're going to walk through some of the back-and-forth  
20 here. On page 2, at 1:15 a.m., and the time zone is in UTC.  
21 We've had some discussion about that, and we're not done with  
22 the discussions about that, but I won't translate it at this  
23 point.

24 You send a message that you say -- start off with "I think  
25 this one is good." Do you see that?

1 A. I do.

2 Q. At the top?

3 A. I do, yes.

4 Q. And the thing you think is a good option is "By continuing  
5 on the web, you will leave the app and be taken to an external  
6 website." Do you see that?

7 A. Yes.

8 Q. A couple lines down, you explain why you think it's good.  
9 You say, "External website sounds scary so execs will love  
10 it." Do you see that?

11 A. I do, yes.

12 Q. So as you were crafting the warning screen for Project  
13 Michigan, for the U.S. injunction compliance, you were trying  
14 to make sure that the language sounded scary, right?

15 A. No, that's not correct.

16 Q. But that's what you wrote here, right?

17 A. That's what I wrote, yes.

18 Q. So one of the reasons you wrote that is that you thought  
19 the executives at Apple would love scary language, right?

20 A. No, that's -- that's incorrect.

21 Q. But that's what you wrote here, right?

22 A. That's what I wrote but in --

23 (Off-the-record discussion.)

24 **BY MS. MOSKOWITZ:**

25 Q. I have my answer. You can have a chance with your counsel

1 to explain what you think you really meant. But I just want  
2 to confirm that's what you wrote there, right?

3 A. That's what I wrote, correct.

4 Q. Okay. And the execs that worked on this, from your  
5 perspective, were Mr. Schiller at the top, right?

6 A. Correct.

7 Q. So let's look at a couple of other examples. And, again,  
8 before we do, words matter, right? We talked about that.

9 A. Absolutely.

10 Q. And you chose your words very carefully, right?

11 A. I -- I'm -- in terms of UX writing, the word "scary"  
12 doesn't -- doesn't mean the same thing as instilling fear.

13 Q. Okay.

14 A. It means raising awareness and caution and grabbing the  
15 user's attention. So that's what I meant here.

16 Q. Okay. Well, you didn't say that. You said "sounds scary  
17 so execs will love it," right?

18 A. That's what I wrote, correct.

19 Q. And the idea was that you were trying to choose words that  
20 would deter users from proceeding, right?

21 A. That's incorrect.

22 Q. You were trying to make sure that the users were  
23 proceeding with caution so that they wouldn't actually go  
24 through with exiting the iOS App and make the purchase  
25 elsewhere, right?

1     **A.** I wanted to raise caution so the user would have all the  
2     facts so that they can make an informed decision on their own.

3     **Q.** So your position was that you were in no way, shape, or  
4     form trying to make sure that the language was such that users  
5     would be deterred from proceeding?

6     **A.** Correct.

7     **Q.** Okay.

8             Let's keep going. So on page .3 at the time stamp 136,  
9     there is some discussion about Mr. Elman's suggestion of  
10    adding a URL. Do you see that?

11    **A.** I do, yes.

12    **Q.** And one thing he says is that one problem with that is  
13    that the URL could be really long. Do you see that?

14    **A.** I do.

15    **Q.** And again, Mr. Elman responds -- here's this word again --  
16    that a long URL makes it look scarier. Do you see that?

17    **A.** I do, yes.

18    **Q.** Okay. Let's go down and make sure we see that.

19                         (Exhibit published.)

20    **BY MS. MOSKOWITZ:**

21    **Q.** Makes it look scarier, right?

22    **A.** Correct, that's what he wrote.

23    **Q.** Then there's some discussion that proceeds about how to  
24    indicate the benefits of staying inside the app and using IAP.  
25    Do you see that?

1       **A.** I do, yes.

2       **Q.** And so, for example, at the bottom of page 3, there's some  
3 discussion about suggesting the user can pay quickly through  
4 IAP as opposed to how cumbersome it will be for the user if  
5 they click on an external link, right?

6       **A.** That is what he writes, correct.

7       **Q.** And at the top of page 4, Mr. Phillips continues. He  
8 says, "I think personally that is why I wouldn't bother. More  
9 steps, have to find my card, type it all out, and then giving  
10 another company my details."

11           Do you see that?

12       **A.** I do, yes.

13       **Q.** So what's being communicated here is that you were all  
14 looking for ways to make clear to the user why they shouldn't  
15 bother to use the alternative payment method because of these  
16 additional steps, right?

17       **A.** No, that's -- that's not correct.

18       **Q.** Okay.

19                               (Simultaneous colloquy.)

20           **THE COURT:** Answer her question. And then we're  
21 going to move on. And your lawyer gets to get up and have you  
22 explain.

23           **THE WITNESS:** Okay. Yes, Your Honor.

24           **THE COURT:** Proceed.

25           **MS. MOSKOWITZ:** Thank you, Your Honor.

1 Q. At 1:44 time stamp, he goes on, Mr. Phillips goes on. He  
2 says, "to make your version even worse." Do you see that?

3 A. I do, yes.

4 Q. And again, "even worse" means less transparent to the user  
5 so that they are less inclined to follow through with the  
6 link, right?

7 A. No, that's not correct.

8 Q. Even worse, his idea to make it even worse was to add the  
9 developer name rather than the app name, right?

10 A. That -- that's what he believed, yes.

11 Q. You don't think that he's communicating to you that this  
12 is a way to make it less transparent to the users what they  
13 were about to do?

14 A. I'm not sure what Mr. Phillips was saying, but I  
15 personally didn't agree with this.

16 Q. Well, whether or not you agreed, you understood that  
17 that's exactly what he was suggesting, correct?

18 A. No. That's not what I understood.

19 Q. You did not understand that?

20 A. No.

21 THE COURT: Well, is that what happened?

22 THE WITNESS: Sorry, Your Honor? Did what happen?

23 THE COURT: Is that what happened? Did you add the  
24 developer name rather than the app name in the end?

25 THE WITNESS: Yes, Your Honor, we did end up adding

1 the developer name, yes.

2 **BY MS. MOSKOWITZ:**

3 **Q.** So he proposes a way to make your version even worse by,  
4 instead of saying the app name, saying the developer name.  
5 And Mr. Elman in below.

6 (Exhibit published.)

7 **BY MS. MOSKOWITZ:**

8 **Q.** He says, "Ooh, keep going.

9 Do you see that?

10 **A.** I do, yes.

11 **Q.** You wouldn't describe your job as making things worse for  
12 users, right?

13 **A.** No, absolutely not.

14 **Q.** But Mr. Elman, his response, "Ooh, keep going," is making  
15 light of how to make this user flow even worse for users,  
16 right?

17 **A.** No, I don't believe that's what he meant here at all.

18 **Q.** Well --

19 **THE COURT:** Who is Josh Elman again?

20 **THE WITNESS:** Your Honor, Josh, Mr. Elman, at this  
21 time, was a product manager working on this.

22 **THE COURT:** And who is Joe Phillips?

23 **THE WITNESS:** Joe Phillips was the design manager for  
24 the App Store.

25 **THE COURT:** Keep going, Ms. Moskowitz.

1                   **MS. MOSKOWITZ:** Thank you, Your Honor.

2           **Q.** So you don't recall subsequent to this ever being told  
3 sort of pause on Michigan, you just don't recall that?

4           **A.** I don't recall that, no.

5           **Q.** Okay. But let's -- let's go on to the work that you were  
6 doing for the Netherlands.

7           If you could turn to 268 in your binder.

8                   **THE COURT:** Ms. Moskowitz, can you explain to me, my  
9 version has crossouts.

10                   **MS. MOSKOWITZ:** I believe that is in the chat that we  
11 were just looking at, Your Honor. I believe that is how it  
12 was produced, where they were live editing things and seeing  
13 each other's sort of comments and edits. That's how it was  
14 produced to us.

15                   **THE COURT:** All right. Thank you.

16                   **MS. MOSKOWITZ:** May I proceed with the next document  
17 or --

18                   **THE COURT:** You may.

19                   **MS. MOSKOWITZ:** Thank you, Your Honor.

20           **Q.** Have you turned to 268 in your binder, sir?

21           **A.** I have, yes.

22           **Q.** Thank you.

23           This is an email chain. The bottom of page 2 is an email  
24 from Mr. Schiller to you and to Mr. Elman, among others, dated  
25 January 28, 2022.

1 Do you see that?

2 **A.** (Reviewing document.)

3 I don't see that, no.

4 **Q.** Okay.

5 **THE COURT:** What page?

6 **MS. MOSKOWITZ:** Two.

7 **THE WITNESS:** Oh, yes. Now I see it, yes.

8 **BY MS. MOSKOWITZ:**

9 **Q.** Okay. And the subject line, please don't read it out  
10 loud, it has a code name. Do you associate that code name  
11 with the Netherlands work?

12 **A.** (Reviewing document.)

13 I do, yes.

14 **MS. MOSKOWITZ:** Okay. So we won't say that out loud  
15 and it should be marked off of the exhibit, blocked off. I  
16 will move to admit CX268?

17 **MR. WESNESKI:** No objection.

18 **THE COURT:** It's admitted.

19 (Exhibit 268 received in evidence.)

20 **MS. MOSKOWITZ:** Thank you, Your Honor.

21 So let's publish that, please.

22 (Exhibit published.)

23 **BY MS. MOSKOWITZ:**

24 **Q.** This is an email about Netherlands compliance planning,  
25 right?

1 A. I -- I believe so, yes.

2 Q. And the formatting is a bit messy, but this is how it was  
3 produced to us. So let's just try to work through it  
4 together.

5 But just to be clear, in the subject line, including  
6 what's redacted -- you have the full in front of you --  
7 there's no reference to Michigan, Wisconsin, or the United  
8 States in here, right?

9 A. No.

10 Q. No, there's not any such reference, correct?

11 A. Correct.

12 Q. Thank you.

13 So let's go to page 11. There's an email from a Monika  
14 Gromek. I'm probably mispronouncing that. Gromek.

15 A. Gromek, yes.

16 Q. Gromek, okay. Is she one of your colleagues in the design  
17 world?

18 A. Yes, that's correct.

19 Q. Okay. She writes at 1:46 p.m., she writes, "Privileged  
20 and confidential, Phil and team." And she goes on to say that  
21 in response to some feedback she received or they -- the team  
22 received, that there are a few updates and additional options  
23 to share. Do you see that?

24 A. I do, yes.

25 MR. WESNESKI: I'm sorry to interrupt, Your Honor. I

1 think this document may have a similar issue that we discussed  
2 earlier. I don't know if Ms. Moskowitz is going to go over it  
3 or not.

4 **THE COURT:** Okay. So it's actually time for a break.  
5 Let's go ahead and stand in recess. And I'll let you all  
6 figure out that particular issue.

7 All right, we'll stand in recess for 20 minutes.

8 (Recess taken at 2:01 P.M.; proceedings resumed at  
9 2:22 P.M.)

10 **THE COURT:** Okay. We're back on the record. The  
11 record will reflect the parties are present. The witness is  
12 on the stand.

13 Did you resolve this issue?

14 **MS. MOSKOWITZ:** Yes, we did, Your Honor. There were  
15 two redactions that Apple has asked us to make. We have  
16 implemented them on the version that will go on the screen,  
17 and we can replace Your Honor's copy at some point subsequent.

18 **THE COURT:** Okay. Go ahead.

19 **MS. MOSKOWITZ:** Thank you. May I proceed with the  
20 exam?

21 **THE COURT:** You may.

22 **MS. MOSKOWITZ:** Thank you.

23 **Q.** Mr. Onak, we were looking at 268. And I believe we  
24 were -- or I was about to send you to page 11. And the -- oh,  
25 I did send you there. So we just didn't put it on the screen.

1           There was an email from Ms. Gromek telling Phil that there  
2           was an updated set of updates, right?

3           **A.** That's correct.

4           **Q.** And if you go to the next page, on page 12, she writes  
5           about halfway down this title "in-app messaging." Do you see  
6           that at the top of the screen?

7           **A.** I don't see anything on the screen.

8           **Q.** Oh.

9                       **THE COURT:** So go ahead. And it should be on your  
10           screen.

11                      **THE WITNESS:** Oh, now I see it, yes.

12                      **MS. MOSKOWITZ:** Great.

13           **Q.** So she says in-app messaging and then she says new copy  
14           and updated user flow in the app. And has two screenshots  
15           below. Do you see that?

16           **A.** I do, yes.

17           **Q.** The screenshots are not there. I didn't get them either  
18           so we don't have them. But do you understand what she's  
19           communicating here to be some screenshots of what the user  
20           flow would look like for the linkout?

21           **A.** Yes, I believe so.

22           **Q.** And she asks Mr. Schiller, underneath that, if he has any  
23           feedback or anything else that she should do before the  
24           meeting tomorrow with Tim. Do you see that?

25           **A.** I do, yes.

1 Q. And you understand that to be a reference to a meeting  
2 that would be happening with Tim Cook?

3 A. I assume so, yes.

4 Q. Okay. So if you go back a couple of pages to page 10, at  
5 the bottom, Mr. Schiller responds to that email and provides  
6 his feedback. He says my thought on each. Do you see that?

7 A. I do, yes.

8 Q. And there's a bunch of comments he has, but the one I want  
9 to focus on is about three-quarters of the way down. He has  
10 comments to the in-app messaging linkout. Do you see that?

11 A. I do, yes.

12 Q. He says -- Mr. Schiller says, "This is not good. This is  
13 a big warning that the user is about to be sent out of the app  
14 to a website. I do not think the headline should say  
15 continue. This is a warning that the user is about to go out  
16 to the web and are they sure they want to do that, we cannot  
17 verify that anything that occurs on the web is private and  
18 secure. The default button should not be continue."

19 Do you see that?

20 A. I do, yes.

21 Q. So that was specific instructions that Mr. Schiller was  
22 giving about what the language and the tone of the message  
23 that would be presented to users for the linkout should be.

24 A. I believe Mr. Schiller was providing his feedback on what  
25 he -- on what he saw in the -- in the comps, yes.

1 Q. And his comment and his feedback was you're being too  
2 light, you need to be more warning, you need to be alert, this  
3 is a warning, the user should be told in no uncertain terms  
4 proceed with caution, right?

5 A. The way -- the way I understood this, that he wanted to  
6 see some more direct language that stated more of the facts  
7 and -- and educated the user about where to go and what was  
8 happening.

9 Q. That he -- his feedback was that the message should have  
10 more of a warning tone, right?

11 A. That's not what I understood from this. The term  
12 "warning" is something that we use everywhere throughout  
13 Apple.

14 Q. So you don't think that his feedback was to have more of a  
15 warning tone.

16 A. I believe he wanted to make --

17 Q. Yes or no?

18 A. -- sure --

19 (Simultaneous colloquy.)

20 **BY MS. MOSKOWITZ:**

21 Q. Yes or no?

22 A. Could you repeat your question again? I'm sorry.

23 Q. Is it your testimony that you did not understand this  
24 feedback from Mr. Schiller to be telling the team have more of  
25 a warning tone in the screen language?

1 A. That's not how I understood it, no.

2 Q. All right. Well, let's look at how Ms. Gromek understood  
3 it. Let's turn to page 9. She responds. She says,  
4 "Privileged and confidential, hi, Phil and team," and she  
5 continues.

6 Do you see that?

7 A. I do, yes.

8 Q. So on the next page near the middle, she writes in-app  
9 messaging, and she says, she updated the title and the copy to  
10 be super clear on what is about to happen and have more of  
11 that warning tone. Right?

12 A. Correct, that's what she wrote.

13 Q. So she understood Mr. Schiller's direction to be having a  
14 more warning tone in the language that was going to be shown  
15 to users, right?

16 A. I believe I can't speak for Ms. Gromek.

17 Q. That's how you understand her sentence there?

18 A. That's -- that's correct, yes, that's what she wrote.

19 Q. In connection with your work on these projects in  
20 developing these screens that would be used in compliance,  
21 purported compliance with these various decisions across the  
22 world, you had various meetings to discuss that language,  
23 right?

24 A. Correct.

25 Q. And you did attend at least one meeting with Mr. Schiller,

1 right?

2 A. At least one, yes.

3 Q. Do you recall how many?

4 A. I don't, no.

5 Q. Five? More than five? Less than five?

6 A. I -- I really don't know.

7 Q. You have no ballpark? It could have been 20?

8 A. It may have been 20, yes.

9 Q. But none with Mr. Cook?

10 A. None with Mr. Cook.

11 Q. Do you recall one of the meetings you attended with  
12 Mr. Schiller was on March 15th, 2022?

13 A. I don't recall that, no.

14 Q. Why don't you take a look in your binder, CX496.

15 A. (Reviewing document.)

16 Q. It's a chat exchange with you and others on March 15,  
17 2022.

18 Do you see that?

19 A. I do, yes.

20 MS. MOSKOWITZ: Your Honor, I'll move in 496.

21 MR. WESNESKI: No objection.

22 THE COURT: It's admitted.

23 (Exhibit 496 received in evidence.)

24 MS. MOSKOWITZ: Thank you.

25 (Exhibit published.)

**BY MS. MOSKOWITZ:**

**Q.** There's a reference here to -- from my -- I absolutely cannot read -- from Mr. Mihai saying as a heads-up that there was an 11:00 a.m. meeting with Monica in advance of the Phil review at 1:00 later that day on March 15th.

Do you see that?

**A.** I do, yes.

**Q.** And do you understand that to be saying that you would be having a meeting with Phil Schiller at 1:00 p.m. and a sort of huddle with the team in advance of that?

**A.** Yes. I -- I'm not sure if I was going to be included in this Phil review, but it seems like Monica wanted to meet beforehand.

**Q.** Okay. And you don't recall whether or not you attended it with Mr. Schiller?

**A.** I -- I don't recall, no.

**Q.** Okay. Let's try 281 in your binder.

**A.** (Reviewing document.)

**Q.** This is a set of messages between, you, Mr. Mihai, Mr. Elman and Mr. Liu on March 15th, 2022. Do you see that?

**A.** I do, yes.

**MS. MOSKOWITZ:** Your Honor, I move CX281 into evidence.

**MR. WESNESKI:** No objection.

**THE COURT:** It's admitted.

(Exhibit 281 received in evidence.)

**MS. MOSKOWITZ:** Thank you. Let's pull that first page up there.

**Q.** It starts off with Mr. Mihai saying, hey, guys, nice work. Do you see that?

**A.** I do, yes.

**Q.** And the time stamp, and this is where we're back to fun with time zone conversion, this is at 8:30 UTC p.m., which I will represent to you is 1:30 p.m. Pacific Time on March 14th, 2022.

Okay?

**A.** Okay.

**Q.** So do you understand what's happening in this chat to be a debrief from the 1:00 p.m. meeting that happened with Mr. Schiller?

**A.** I do, yes.

**Q.** Does that refresh your recollection that you were at that meeting?

**A.** It does not, no.

**Q.** So the chain nonetheless is discussing how to implement Mr. Schiller's comments from that meeting, fair?

**A.** I believe so, yes.

**Q.** And he had given specific feedback at that meeting about the language that would be used, right?

**A.** He -- he may have, but I'm -- I don't remember.

1 Q. Well, let's look at a couple of examples of where that's  
2 being discussed and see if it helps.

3 Mr. Schiller's comments are repeatedly referred to, for  
4 example, on page 1. You -- you comment: Not sure how  
5 important, quote, leaving the app is in Phil's eyes.

6 That's a reference to Mr. Schiller, right?

7 A. Correct.

8 Q. And on page 2, Mr. Elman refers to: Phil did like the,  
9 quote, "this app is" language.

10 Do you see that?

11 A. (Reviewing document.)

12 Q. On the screen as well.

13 A. Yes. I see that.

14 Q. And that's a reference to Mr. Schiller liking some  
15 language, right?

16 A. Correct.

17 Q. And you understand that that's feedback from the meeting.

18 A. I assume so, yes.

19 Q. Okay.

20 There's a couple of more, one other one we can point to on  
21 page 3. This is from you where at 9:33 you say: For sure,  
22 I'm just reacting to it because Phil specifically called out,  
23 quote, when you leave the app today.

24 Do you see that?

25 A. I do, yes.

1 Q. And does that lead you to believe that you were present at  
2 a meeting at which Mr. Schiller gave feedback on the language?

3 A. It does not, no.

4 Q. That's not how you read it?

5 A. No. It -- I don't think it means that I was at the  
6 meeting, no.

7 Q. Okay. But you understand that it's comments that  
8 Mr. Schiller gave that day about the language.

9 A. Correct.

10 Q. All right.

11 Let's look at page 5.

12 (Exhibit published.)

13 **BY MS. MOSKOWITZ:**

14 Q. There's a graphic at the top of the page. Do you see  
15 where I am?

16 A. I do, yes.

17 Q. And the title --

18 **MS. MOSKOWITZ:** Oh, pull it, pull it, pull it.

19 Sorry.

20 Can we please redact the top of that page and republish  
21 it.

22 (Exhibit published.)

23 **BY MS. MOSKOWITZ:**

24 Q. Okay. You have in front of you the actual title of that  
25 slide on page 5. Do you see that?

1 A. I do, yes.

2 Q. And it says "unified linkout sheet," right?

3 A. Yes.

4 Q. And it's referring to two code names, right?

5 A. Correct.

6 Q. And what this is referring to is a unified warning screen  
7 that would be used for the Netherlands and for the reader app  
8 linkout, right?

9 A. Correct, yes.

10 Q. And there's no reference to Michigan, Wisconsin, or the  
11 United States here, right?

12 A. Correct.

13 Q. And so the plan as of this time was to have the same  
14 language being used for both the Netherlands linkout and the  
15 reader app linkout, right?

16 A. I believe there -- we had a conversation about that, yes.

17 Q. But the language had not yet been arrived at, right?

18 A. I believe so, yes.

19 Q. That's what you're workshopping here, right?

20 A. Correct.

21 Q. So let's go back to the first page of 281.

22 About halfway down you provide three proposals for that  
23 warning screen language. Right?

24 (Exhibit published.)

25 **THE WITNESS:** Correct.

1 **BY MS. MOSKOWITZ:**

2 **Q.** And there's some back-and-forth on variations of that  
3 language. And I'm going to skip ahead to page 2. In the  
4 middle, you write, "Josh, for some reason saying, quote, this  
5 app is about to take you, end quote, feels safe to me like  
6 don't worry, you're still within the app, and it's just  
7 guiding you somewhere else right now."

8 Do you see that?

9 **A.** I do, yes.

10 **Q.** So what you were communicating is you didn't like that  
11 language because that could make the user feel safe and the  
12 goal was to not make them feel safe, right?

13 **A.** It's not my responsibility to make the user feel safe.  
14 It's my responsibility to make the user feel educated and  
15 well-informed.

16 **Q.** You wanted them to feel like it was not safe to proceed,  
17 right?

18 **A.** No, that's not correct.

19 **Q.** Do you believe it's unsafe for them to proceed?

20 **A.** Yes, I believe it's -- it's safe. They can -- the user  
21 can do whatever they want.

22 **Q.** Okay. But that's not what you said to users, right? You  
23 wanted to make sure that they were told that it was super  
24 unsafe to proceed, right? That was the goal.

25 **A.** No, that was not the goal.

1 Q. Okay. Well, it keeps going.

2 Mr. Elman responds. He says, "Yeah, good point. About to  
3 go is a little more like into the great wide open."

4 Right?

5 A. Correct. That's what he wrote.

6 Q. So the idea here was to make users feel like they were  
7 going into the great wide open, the unknown, right?

8 A. That's what Mr. Elman said, yes.

9 Q. You don't think that this discussion is about making the  
10 users feel like it was not safe to proceed through the link?

11 A. I don't believe so. I believe this was a healthy  
12 discussion looking at different copy options and design  
13 elements.

14 Q. On the bottom of the same page, you say that the language  
15 "this app is about to send" is better than "this app is about  
16 to take" because it doesn't sound like the app will be holding  
17 your hand. Do you see that?

18 A. I do, yes.

19 Q. So you wanted to make sure the user felt like they were  
20 going to be on their own after flicking the link, right?

21 A. I believe that because that was -- that was what actually  
22 was going to happen. So it's factual, yes.

23 Q. So you wanted the user to feel like they were at risk?

24 A. I wanted the user to be informed that this was going to  
25 happen and raise some caution.

1 Q. You think that users are not familiar with clicking on  
2 links on the Internet?

3 A. I'm sure some users are, but I don't think a lot of people  
4 understand how technology works and how links work.

5 Q. There's more back-and-forth. And now in the middle of  
6 page 3, you suggest some language. You say, "This app is  
7 about to send you out to an external website. You will no  
8 longer be transacting with Apple." And you can -- continue.  
9 "I have no preference for out. It works either way."

10 Do you see that?

11 A. I do, yes.

12 Q. But you -- you come back to that a couple lines down on  
13 the bottom. You say, "Josh," this is you speaking, "Josh, if  
14 we want to scare users a bit, I like the addition of 'out'  
15 because it raises questions and hesitancy, haha, out, out  
16 where? OMG, what do I do?"

17 Do you see that?

18 A. I do, yes.

19 Q. So you were communicating to your colleagues that you  
20 liked the addition of the word "out" because it was going to  
21 make users feel hesitant about proceeding and feel scared  
22 about what was going to happen when they were out there,  
23 right?

24 A. No, that's incorrect.

25 Q. You understood your assignment was to develop language

1 that would lead users to feel uncertain and scared about what  
2 would happen to them if they proceeded to follow the link out  
3 to the website, right?

4 **A.** That's -- that's incorrect. My goal was to inform the  
5 user about all the facts.

6 **Q.** You wanted to raise hesitancy in the user, right?

7 **A.** I wanted to grab their attention so they would stop and  
8 read the entire sheet.

9 **Q.** You wanted to raise hesitancy to the user, correct?

10 **A.** That's -- that's not correct.

11 **Q.** That's what you said here, right?

12 **A.** I don't believe I said that. I -- I said it could  
13 potentially raise hesitancy.

14 **Q.** Sir, that's not here. You said, "I like the addition of  
15 'out' because it raises questions and hesitancy, ha, ha,"  
16 right?

17 **A.** That's what it says, yes.

18 **Q.** Right. There's no "potential" in there, right?

19 **A.** Correct.

20 **Q.** So if you could turn to another exhibit in your binder,  
21 487, please.

22 And if you want to look at page 4, you join the -- the  
23 channel, the discussion on page 4, if that helps. But this is  
24 a text chain or a chat chain on May 15, 2023, that you  
25 participated in. Do you see that?

1       **A.** I do, yes.

2               **MS. MOSKOWITZ:** Your Honor, I move CX487 into  
3 evidence.

4               **MR. WESNESKI:** No objection.

5               **THE COURT:** It's admitted.

6                       (Exhibit 487 received in evidence.)

7               **MS. MOSKOWITZ:** Thank you.

8               Can I just make sure the -- no code names here. Okay.

9                       (Exhibit published.)

10       **BY MS. MOSKOWITZ:**

11       **Q.** Okay. So there's a graphic in the middle under -- there's  
12 Josh Elman.

13               **MS. MOSKOWITZ:** Actually if we could pill up the  
14 chain as well. Yes, thank you.

15                       (Exhibit published.)

16       **BY MS. MOSKOWITZ:**

17       **Q.** Let's just look at that. At the top, there's a chat to  
18 Josh Elman saying, "Are we using the," blanked out, "in-app  
19 sheet copy button as is?"

20               Do you see that?

21       **A.** Yes.

22       **Q.** And what's blanked out we won't say out loud, but what  
23 it's referring to is the unified Netherlands and reader app  
24 warning screens that we were just discussing, right?

25       **A.** Correct.

1 Q. And so the question that's being asked is we're now back  
2 to talking about the United States injunction, right?

3 A. Correct.

4 Q. And the question is, okay, well, picking back up on the  
5 U.S., is the plan to use the screen that we developed, the  
6 unified screen that we developed for the Netherlands and the  
7 reader app project, right?

8 A. Correct.

9 Q. And the response from Mr. Elman is the current plan is  
10 yes. Do you see that?

11 A. Yes.

12 Q. So this is May 2003, and the plan as of that time as  
13 you -- your colleagues understood it, was to use the same  
14 language that had been workshopped and developed, including  
15 through all the messages we just looked at for the Netherlands  
16 and the reader app, to use that same screen for responding to  
17 this Court's injunction, right?

18 A. I -- I believe that's what, yes, we were discussing and  
19 seeing if that's the right decision.

20 Q. Well, it's not what ended up happening, right?

21 A. I don't believe it was, no.

22 Q. Right. You understand that a different screen was arrived  
23 at and finalized for purposes of the compliance with the U.S.  
24 injunction, this Court's injunction?

25 A. Correct.

1 Q. And you understood, did you not, that that was in response  
2 to the executives dictating that there would be changes to  
3 that screen specifically for the U.S. users?

4 A. I was -- I was not aware of that, no.

5 Q. You -- did you have any understanding as to from whom the  
6 direction came to not just use the same screen that you all  
7 had spent so much time developing?

8 A. I wasn't sure. I mean I assumed, but I wasn't sure.

9 Q. You assumed it was Mr. Schiller and other executives?

10 A. I believe, yeah. I believe that's a fair assumption, yes.

11 Q. Is that what the assumption is that you made?

12 A. Yes.

13 Q. Had you ever heard that it was from Mr. Cook or  
14 Mr. Schiller?

15 A. No.

16 Q. Well, you worked on the project to take what was currently  
17 the screen that we're looking at here and turn it into the  
18 final screen that was ultimately chosen, right?

19 A. Correct.

20 Q. And let's pull -- while we have that here, let's look at  
21 the middle screen there that we have.

22 MS. MOSKOWITZ: And if we could pull that up and then  
23 at the same time -- I don't know if this is doable -- pull up  
24 the final screen from CX3 which is in evidence. I just want  
25 to sort of put those two screens -- wonderful, look at that.

(Exhibit published.)

**BY MS. MOSKOWITZ:**

**Q.** So on the left we have the unified Netherlands and reader app screen, correct?

**A.** Correct.

**Q.** And on the right, we have the final screen that was selected for compliance with this Court's injunction. Right?

**A.** Correct.

**Q.** All right.

So let's focus on the -- the couple language pieces here. There's an additional sentence at the end for the U.S. injunction that is not present on the left. It says, "Apple can't verify any pricing or promotions offered by the developer." Do you see that?

**A.** I do, yes.

**Q.** That's not present in the Netherlands or the reader app warning screen, right?

**A.** It is not, no.

**Q.** And the message that's being communicated here is you might be getting duped by the developer, staying with Apple is safe. Right?

**A.** No, that's not what it's saying at all.

**Q.** It's saying proceed with caution because you may not in fact be getting any of the pricing or promotions that you're being promised to lead to you click this link, right?

1 A. No, that's not correct.

2 Q. Okay. Let's look at the bold language.

3 At the top, the left-hand says, the second sentence, "You  
4 will no longer be transacting with Apple," right?

5 A. Correct.

6 Q. That's a statement that says you're -- Apple is not  
7 responsible, you're transacting with someone else, right?

8 A. Correct.

9 Q. But instead of that language, what the U.S. language now  
10 says is Apple is not responsible for the privacy or security  
11 of purchases made on the web. Right?

12 A. Correct.

13 Q. That language is scarier than you will no longer be  
14 transacting with Apple, right?

15 A. I don't believe it's scarier. I believe it's more factual  
16 and informative.

17 Q. You don't think it's scarier, sir?

18 A. I -- I do not, no.

19 Q. You don't think that it's going to deter more users from  
20 following through with the link?

21 A. I'm -- I can't speak for users. I don't believe so, no.

22 Q. You can't speak for users, but it's your job to choose  
23 words that allow users to make informed decisions?

24 A. It's my job to educate them so they make informed  
25 decisions, yes.

1 Q. You understand that the -- the decision that was taken by  
2 Apple was to take language that had been already decided and  
3 arrived at for worldwide reader apps, and the Netherlands for  
4 compliance with a similar order, and add warning language,  
5 additional warning language that would in all likelihood deter  
6 users from proceeding, right?

7 A. That's not correct. For all of our projects at Apple, we  
8 always look for ways to iterate and improve language. And I  
9 believe this is one of those instances.

10 Q. Well, you acknowledge, though, that if this is the new and  
11 improved version, you have not used this new and improved  
12 version and changed the reader app screen or changed the  
13 Netherlands screen, right?

14 A. I -- I believe that's right. I'm not sure.

15 Q. Right. You understand sitting here today that the  
16 left-hand screen is still currently in use for all reader apps  
17 and for the Netherlands dating apps, correct?

18 A. If you say so, yes.

19 Q. You have no reason to doubt that, right?

20 A. I do not, no.

21 MS. MOSKOWITZ: I pass the witness, Your Honor.

22 THE COURT: And we have Mr. Wesneski.

23 MR. WESNESKI: Wesneski, Your Honor.

24 THE COURT: Did I say it wrong? Wesneski.

25 MR. WESNESKI: Wesneski.

1 May we approach Mr. Onak with a binder, please?

2 **THE COURT:** You may.

3 (Pause in the proceedings.)

4 **MR. WESNESKI:** May I proceed, Your Honor?

5 **THE COURT:** Once I have a binder. Is it the same  
6 binder?

7 (Off-the-record discussion.)

8 **THE COURT:** You may proceed.

9 **MR. WESNESKI:** Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. WESNESKI:**

12 **Q.** Mr. Onak, you mentioned to Ms. Moskowitz that you're a UX  
13 writer. What is your -- what are your responsibilities as a  
14 UX writer?

15 **A.** As a UX writer, I'm responsible for crafting clear,  
16 concise, and helpful copy for the user to help them achieve  
17 something that they're trying to do in an app or service.

18 **Q.** And can you just explain for the Court maybe some examples  
19 of what we might see of your writing in an app or the App  
20 Store?

21 **A.** Sure. It's -- it's things like error messages, button  
22 labels, notifications, banner text, things that you see  
23 throughout the UI in an app.

24 **Q.** Do you write marketing or advocacy materials for the App  
25 Store?

1 A. I do not, no. We have a separate marketing team that  
2 writes that.

3 Q. For a particular user message, how do you know what the  
4 content of that message is going to be?

5 A. The -- the content is typically provided by other teams  
6 from product, maybe legal. So I take that information. Then  
7 I draft a copy around that.

8 Q. And as a UX writer, do you have the final approval on user  
9 copy?

10 A. I definitely provide input. I provide my feedback, but  
11 no, I do not have the final say.

12 Q. Okay. Can you just explain maybe your personal writing  
13 process when you have a new assignment given to you?

14 A. Yeah. So when an assignment is given to me, I gather all  
15 the -- all the details, everything that initially needs to be  
16 included.

17 And then I take that and I draft a few different copy  
18 proposals, playing around with the hierarchy, the tone, the  
19 length, things like that. And then once I feel good about  
20 some options, I then present them to my other team members.

21 Q. Is it ever your practice to put something in user copy  
22 that is inaccurate?

23 A. No, absolutely not.

24 Q. Is it ever your practice to put something in user copy  
25 that would be misleading?

1 A. No.

2 Q. Okay. I want to talk a little bit about your role in  
3 Project Michigan which you went over with Ms. Moskowitz.

4 To just be clear, what was your role in Project Michigan?

5 A. My role was to draft the copy for the system disclosure  
6 sheet.

7 Q. Did you decide whether there would be a system disclosure  
8 sheet?

9 A. I did not, no.

10 Q. Did you have responsibility for any other aspect of  
11 Project Michigan other than the words on the system disclosure  
12 sheet?

13 A. No.

14 Q. That individual writing process that you just described,  
15 did you follow that for project Michigan?

16 A. I did, yes.

17 Q. And how did you know what the content of the system  
18 disclosure sheet was supposed to be?

19 A. I believe the content was provided from product and -- and  
20 legal. And then again, I took that information and I started  
21 drafting copy around that.

22 Q. Was it -- what was your understanding of what you were  
23 trying to accomplish with the system disclosure sheet?

24 A. My understanding, we wanted to inform users about what was  
25 going to happen if the user left the app and the App Store.

1 Q. Did anyone ever tell you that the copy should be drafted  
2 in such a way as to deter users from actually leaving the app?

3 THE COURT: So this is your witness. Stop leading.

4 MR. WESNESKI: Yes, Your Honor.

5 Q. What instructions, if any, did you receive about the  
6 purpose of the system disclosure sheet?

7 A. We did not really receive instructions about the purpose.  
8 It was more just to educate users and give them all the facts  
9 that -- that they needed to know.

10 Q. You discussed with Ms. Moskowitz a little bit about the  
11 Court's orders and the injunction. Do you remember that?

12 A. I do, yes.

13 Q. Did you have responsibility for making sure that the  
14 system disclosure sheet was in compliance with the Court's  
15 injunction?

16 A. No.

17 Q. To best of your understanding, whose responsibility was  
18 that?

19 A. I believe that was App Store leadership and legal.

20 Q. Did -- was legal at all involved in the system disclosure  
21 sheet?

22 A. Yes, absolutely.

23 Q. Okay. All right. Ms. Moskowitz showed you a document  
24 from November 16th, 2021, and I believe it's CX206. I'm not  
25 sure if we have an electronic version on our side.

(Pause in the proceedings.)

**MR. WESNESKI:** Thank you. Could we please go to the second page of the document.

(Exhibit published to witness, counsel, and the Court.)

**BY MR. WESNESKI:**

**Q.** All right. Counsel directed you to a conversation near the top where you say "external website sounds scary."

Do you see that?

**A.** I'm sorry. 206?

**Q.** Yes. I'm sorry. It's not in the binder I handed you.

**A.** Oh, I see.

**Q.** It would be in Ms. Moskowitz's binder.

**A.** Oh, I see it on the screen now.

**Q.** Yes. Do you see the statement that you went over with Ms. Moskowitz, "external website sounds scary"?

**A.** I do, yes.

**Q.** What did you mean by that?

**A.** In -- in this situation, I meant that external website sounds scary in the way that it would raise caution and grab the user's attention. When it comes to UX writing, "scary" is a term that's used to -- in certain context to make sure that the user stops and reads everything to make sure that they got all their information up front.

**Q.** Is this a term you've used in other UX projects?

**A.** Yes, absolutely. It's a way that sometimes I describe

1 different copy options, yes.

2 Q. All right. Then after that, it says "so execs will love  
3 it." What did you mean by that?

4 A. In my experience, working with our App Store leadership,  
5 they like seeing versions that use strong direct language and  
6 provide the facts. So in this case, I thought "external  
7 website" was an accurate label. So I thought they would --  
8 they would like to see that so -- and have some healthy  
9 discussion around it.

10 MR. WESNESKI: Okay. If we could please go to the  
11 next page, page 3.

12 (Exhibit published to witness, counsel, and the Court.)

13 BY MR. WESNESKI:

14 Q. There is another exchange there about -- from Mr. Elman  
15 about the inclusion of a URL in the system disclosure sheet.  
16 Do you remember that exchange?

17 A. I do, yes.

18 Q. And the comment that was read to you is near the top,  
19 about makes it look scarier, lets the user validate it.

20 Do you see that?

21 A. I do, yes.

22 Q. To the best of your understanding, what did you understand  
23 Mr. Elman to mean by that?

24 A. In my opinion, I thought Mr. Elman was saying that if we  
25 included you a URL that was long and maybe included some

1 characters that were a bit strange, it would raise the user's  
2 attention and grab their attention and -- and instill a little  
3 caution in them.

4 **Q.** If you go about halfway down the page, there's another  
5 message from Mr. Elman. It says, "Just for one variant, it  
6 can be an alt, I just think it puts the develop on the spot  
7 for a readable URL which seems like a net positive for  
8 customers." Do you see that?

9 **A.** I do, yes.

10 **Q.** What do you think Mr. Elman meant by a net positive for  
11 customers?

12 **A.** I believe Mr. Elman thought that if we included a readable  
13 URL, meaning a little shorter, maybe a little bit more  
14 recognizable, that it would be beneficial for customers  
15 because it would be something that they're more familiar with.

16 **Q.** Do you know whether the system disclosure sheet in effect  
17 today for Project Wisconsin has the URL in it?

18 **A.** It does not, no.

19 **Q.** Then we looked at the fourth page near the top where  
20 counsel directed you to a comment from -- a couple comments  
21 from Mr. Phillips. The first two said, "I think personally  
22 that's why I wouldn't bother. More steps. Have to find my  
23 card."

24 Do you see that message up there?

25 **A.** I do, yes.

1 Q. What did you understand Mr. Phillips to be discussing or  
2 raising there?

3 A. I'm not entirely sure. I believe Mr. Phillips was just  
4 kind of walking through his process of how he would feel if he  
5 went through with this.

6 Q. What do you mean if he went through with this?

7 A. If he was -- if he was in the user's shoes and was  
8 interacting with this sheet.

9 Q. Then Mr. Phillips, below that, counsel directed you to the  
10 statement to make your version even worse, you could add the  
11 developer name.

12 See that?

13 A. I do, yes.

14 Q. To the best of your recollection or understanding, what  
15 did you understand Mr. Phillips to mean by that?

16 A. I believe Mr. Phillips was discussing whether or not we  
17 would add the developer name or the app name. When I -- when  
18 I read this, I didn't necessarily agree with Mr. Phillips. I  
19 think there's a lot of benefit of adding the developer name  
20 because it allows -- it gives the user some additional  
21 information. But I think we were just having a discussion  
22 about which one is -- is preferred.

23 Q. Okay. Let's go, if we could, move away from Project  
24 Michigan and we'll talk about your work in the Netherlands,  
25 which Ms. Moskowitz covered with you.

1                   **MR. WESNESKI:** If we could pull up CX0281.

2                   (Exhibit published to witness, counsel, and the Court.)

3                   **BY MR. WESNESKI:**

4                   **Q.** And Ms. Moskowitz directed you to a comment on the second  
5                   page, if we could go there. About halfway down the page, you  
6                   mentioned certain language, making you feel safe. And it  
7                   looks like you propose an alternative.

8                   Do you remember going over that with Ms. Moskowitz?

9                   **A.** I do, yes.

10                  **Q.** And can you just explain what you meant by that?

11                  **A.** To me, the -- the term "this app is about to take you"  
12                  felt inaccurate. I didn't want the -- the user to wrongly  
13                  believe that the App Store or Apple was going to hold their  
14                  hand as they -- as they leave to external websites. So I  
15                  wanted to make it more accurate by changing some of the copy.

16                  **Q.** You see -- you say there, I think you're speaking in the  
17                  voice of the user, like don't worry, you're still within the  
18                  app. Do you see that?

19                  **A.** I do, yes.

20                  **Q.** Is it accurate that the user is still within the app if  
21                  they proceed past the system disclosure sheet?

22                  **A.** If they proceed, no, it is not accurate.

23                  **Q.** Okay. Can we please go to the next page, 281.3.

24                  (Exhibit published to witness, counsel, and the Court.)

25                  / / /

1 **BY MR. WESNESKI:**

2 **Q.** And there's a comment from you at the very bottom of the  
3 screen that Ms. Moskowitz went over with you. Do you recall  
4 that?

5 **A.** I do, yes.

6 **Q.** So just, I think we've covered this already, but when you  
7 say, "if we want to scare users a bit," can you just explain  
8 what you mean by that?

9 **A.** Yeah. To me -- to me, the term "scare" in UX writing,  
10 it's -- it's not instilling fear or -- or causing anxiety.  
11 It's to bring caution and -- and grab the user's attention so  
12 they stop and -- and really read every word so they are  
13 well-informed.

14 **Q.** Do you know whether the final system disclosure sheet in  
15 effect for Project Wisconsin includes this word "out" that you  
16 proposed here?

17 **A.** It does not, no.

18 **Q.** Let's move on and talk a little bit about Project  
19 Michigan -- or excuse me -- Project Wisconsin. What was your  
20 role in Project Wisconsin, and how was it different, if at  
21 all, from what you did for Project Michigan?

22 **A.** It was not different at all. I was tasked to write the  
23 system disclosure sheet for that as well.

24 **Q.** And how did you know what content was going to be in the  
25 system disclosure sheet?

1     **A.** Similar to Project Michigan, I received some initial  
2     content suggestions from -- from legal and the product team,  
3     and I took that information and started drafting copy.

4     **Q.** All right. If we could please go to another document that  
5     Ms. Moskowitz showed you, CX0487.

6                     (Exhibit published.)

7     **BY MR. WESNESKI:**

8     **Q.** And I believe you went over with Ms. Moskowitz the then  
9     current proposal about using an existing system disclosure  
10    sheet. Do you remember that exchange?

11    **A.** I do, yes.

12    **Q.** And I think you told Ms. Moskowitz that you ultimately  
13    didn't use that preexisting system disclosure sheet; is that  
14    right?

15    **A.** Correct.

16    **Q.** Why -- why not?

17    **A.** At -- at Apple, we're always iterating on copy. We're  
18    receiving feedback from different teams. So I -- I assume at  
19    this point we -- we wanted -- we looked at the copy and wanted  
20    to improve it. Maybe we had to meet some different  
21    requirements, things like that.

22    **Q.** Okay. Thank you.

23                   **MR. WESNESKI:** Mr. Montgomery, could we please pull  
24    up CX1208.

25                   (Exhibit published to witness, counsel, and the Court.)

1 **BY MR. WESNESKI:**

2 **Q.** Mr. Onak, do you recognize this document?

3 **A.** I'm sorry, I don't see anything on the screen yet.

4 **MR. WESNESKI:** Oh, I'm sorry.

5 **THE WITNESS:** Yep, now I see it. I do, yes.

6 **BY MR. WESNESKI:**

7 **Q.** And what is it?

8 **A.** This appears to be a Slack conversation between Ms. Cote  
9 Mr. Magnani, and Mr. Liu and myself.

10 **Q.** Do you see the date at the top right, May 15th, 2023?

11 **A.** I do, yes.

12 **Q.** Okay. Do you understand what work this exchange relates  
13 to based on the content and the date?

14 **A.** I do, yes.

15 **Q.** What -- what work does this relate to?

16 **A.** I believe this is Project Wisconsin.

17 **Q.** And is this a document created and maintained in the  
18 ordinary course of business at Apple?

19 **A.** Correct.

20 **MR. WESNESKI:** I'd like to move CX1208 into evidence.

21 **MS. MOSKOWITZ:** No objection.

22 **THE COURT:** It's admitted.

23 (Exhibit 1208 received in evidence.)

24 **MR. WESNESKI:** Thank you.

25 (Exhibit published.)

**BY MR. WESNESKI:**

**Q.** At the bottom of the page there's a message from someone named Bri Cote to you and several others. Do you see that?

**A.** I do.

**Q.** Who is Ms. Cote?

**A.** Ms. Cote is a App Store producer.

**Q.** What does that mean?

**A.** A producer at Apple is essentially a project manager.

**Q.** Okay. You see in Ms. Cote's message there's a few bullet points. Do you know what those bullets points are?

**A.** I do, yeah. It seems like there was an engineering or design review or a meeting, and out of that -- out of that review, there came out some -- some three different copy options, proposals to move forward with.

**Q.** Is it normal for Apple or for you, when working on user copy, to consider more than one option or alternative?

**A.** Yes, absolutely.

**Q.** Why is that?

**A.** Working on different options, me personally allows me to play around with different tone, different length. And I also note that presenting different options creates better discussion among -- among teams, and I receive better feedback.

**Q.** Okay. Thank you.

**MR. WESNESKI:** Mr. Montgomery, if we could please

1 pull up CX1211, not published to the gallery yet, please.

2 (Exhibit published to witness, counsel, and the Court.)

3 **BY MR. WESNESKI:**

4 **Q.** Do you recognize this document?

5 **A.** I do, yes.

6 **Q.** What is it?

7 **A.** This appears to be another Slack conversation between  
8 Mr. Phillips, Mr. Magnani, and -- and me.

9 **Q.** And you see the date at the top right, June 21st, 2023?

10 **A.** Yes.

11 **Q.** Based on the date and the content, do you have an  
12 understanding of what project or projects this relates to?

13 **A.** Yes. I believe this is Project Wisconsin.

14 **Q.** Is this a document created and maintained in the ordinary  
15 course of business at Apple?

16 **A.** Yes.

17 **MR. WESNESKI:** I'd like to move CX1211 into evidence.

18 **MS. MOSKOWITZ:** No objection, Your Honor.

19 **THE COURT:** It's admitted.

20 (Exhibit 1211 received in evidence.)

21 **MR. WESNESKI:** Thank you, Your Honor.

22 (Exhibit published.)

23 **BY MR. WESNESKI:**

24 **Q.** At the top of the document, you write to Joseph Magnani.

25 Well, first off, who is Mr. Magnani?

1     **A.** Magnani is another designer for the App Store that I work  
2     with.

3     **Q.** And you mentioned he's a designer. Are you a designer for  
4     the App Store?

5     **A.** I'm not, no. I'm a UX writer for the App Store.

6     **Q.** What's the difference between those two jobs?

7     **A.** A UX writer, I focus primarily on the words and -- and  
8     what users read. Designers primarily focus on the design  
9     elements and the pixels and how things look and appear.

10    **Q.** Okay. You say to Mr. Magnani, "I have some alts for the  
11    Wisconsin title. Can you put these in situ and I can email  
12    them to the group." Do you see that?

13    **A.** I do, yes.

14    **Q.** What's the Wisconsin title?

15    **A.** The Wisconsin title is the -- the big bold text at the top  
16    of the screen.

17    **Q.** And just for our own education, what is situ?

18    **A.** Situ is -- it's designer language. Basically I was  
19    telling Mr. Magnani to put my words into the design elements  
20    so we can see the entire design.

21    **Q.** Okay. And below this message then it looks like you have  
22    four numbered paragraphs. Do you see that?

23    **A.** I do, yes.

24    **Q.** What are those numbered paragraphs?

25    **A.** Those numbered paragraphs are -- are different copy

1 variations.

2 Q. Now we saw in the previous document that there were three  
3 options on the table. And here you have four alternatives.

4 Why are you offering four alternatives if you already have  
5 these other three options that you discussed a month before?

6 A. I -- I probably received additional feedback. I was told  
7 to come up with additional options to look at. So I think  
8 I -- this is me providing more copy options to get feedback on  
9 from the team.

10 Q. Is that unusual to have feedback in multiple iterations?

11 A. It is not, no.

12 MR. WESNESKI: And finally, Mr. Montgomery, if we  
13 could pull up CX1210, please.

14 (Exhibit published to witness, counsel, and the Court.)

15 BY MR. WESNESKI:

16 Q. Do you recognize this document? I'm sorry.

17 A. I do, yes.

18 Q. Okay. What is it?

19 A. This appears to be a discussion in the private Slack  
20 channel.

21 Q. Do you see that -- words at the top, private channel  
22 hashtag amp-Wisconsin?

23 A. I do, yes.

24 Q. What does that signify to you?

25 A. This signifies that this is a channel related to Project

1 Wisconsin.

2 Q. And the date there, June 21st, 2023?

3 A. Correct.

4 Q. Is this a document created and maintained in the ordinary  
5 course of business at Apple?

6 A. Yes.

7 MR. WESNESKI: I'd like to move CX1210 into evidence,  
8 please.

9 MS. MOSKOWITZ: No objection, Your Honor.

10 THE COURT: It's admitted.

11 (Exhibit 1210 received in evidence.)

12 BY MR. WESNESKI:

13 Q. At the top, Mr. Onak, there's a note from someone named  
14 Atusa Savio. Do you see that?

15 A. I do, yes.

16 Q. Who is Ms. Savio?

17 A. Ms. Savio is another project manager at Apple.

18 Q. Okay. And you see that she asked you when can you target  
19 sending copy to Shawn Cameron?

20 A. I do, yes.

21 Q. Who is Shawn Cameron?

22 A. Mr. Cameron is -- leads the App Store legal team at Apple.

23 Q. Why would you be sending the copy to Mr. Cameron?

24 A. Mr. Cameron was heavily involved in the process and was  
25 providing guidance and feedback along the way.

1 Q. Thank you.

2 MR. WESNESKI: Mr. Montgomery, can we please pull up  
3 the demonstrative for Mr. Onak.

4 And I'm sorry, did we hand out copies of that? It's just  
5 the system disclosure sheet but --

6 (Pause in the proceedings.)

7 MR. WESNESKI: May we approach Mr. Onak with the  
8 demonstrative, please?

9 THE COURT: You may.

10 MR. WESNESKI: Thank you.

11 THE WITNESS: Thank you.

12 BY MR. WESNESKI:

13 Q. Mr. Onak, do you recognize what this is?

14 A. I do, yes.

15 Q. What is it?

16 A. This is the final system disclosure sheet for Project  
17 Wisconsin.

18 Q. And did you write or contribute to the writing of the  
19 words on this page?

20 A. I did, yes.

21 Q. Is there anything in here that you believe is inaccurate  
22 or that you would like to correct?

23 A. No, there is not.

24 Q. Is there anything in here that, with the benefit of  
25 hindsight, you think may be misleading?

1     **A.** No.

2     **Q.** What, in your view, is the purpose and effect of this  
3     system disclosure sheet from a UX writing perspective?

4     **A.** I believe this sheet clearly tells the user what is going  
5     to happen, presents all the facts and allows them to make a  
6     choice based on what they read.

7                     (Demonstrative published.)

8             **THE COURT:** Here it is, Jennie, right here.

9     **BY MR. WESNESKI:**

10    **Q.** And I'm sorry, Mr. Onak, I asked you this already, but  
11    maybe just remind us what you understood the purpose of the  
12    system disclosure sheet to be for Project Wisconsin.

13    **A.** I believe the purpose of this sheet was to inform the user  
14    with facts and tell them exactly what was -- what was going to  
15    happen if they left the App Store or the app that they were  
16    currently in.

17    **Q.** And in your view as a UX writer, do you believe that this  
18    system disclosure sheet accomplishes that?

19    **A.** I do absolutely.

20             **MR. WESNESKI:** No further questions, Your Honor.

21             **THE COURT:** Reexam?

22             **MS. MOSKOWITZ:** May I proceed, Your Honor?

23             **THE COURT:** You may.

**REDIRECT EXAMINATION**

**BY MS. MOSKOWITZ:**

**Q.** I just want to make sure -- I don't have the quotes, but I just want to understand. You were asked about the same language I had asked you about when you talked about how some language about external website would be scary and execs would love it. Do you remember me asking about it and your counsel asking about it?

**A.** I do, yes.

**Q.** And I think I heard you say that you thought the reason execs would love it is because it was strong direct language, because "external website" is an accurate label and execs would like to see that. Did I get that right?

**A.** I -- I believe so. I can't say exact, but, yes, that sounds right.

**Q.** So your testimony is that when you were speaking to your colleagues about how the language you were proposing was scary and that execs would love it was just that you were being accurate; that's what you meant?

**A.** That's correct.

**Q.** Okay. There was some follow-up on the discussion you were having with your colleagues about using the developer name in the warning screen instead of the app name; do you recall that?

**A.** I do, yes.

1 Q. And your testimony was that you thought it was actually a  
2 benefit of adding the developer name; do you recall that  
3 testimony?

4 A. I do, yes.

5 Q. But you didn't just add the developer name. You replaced,  
6 you have no reference to the app name in the there, correct?

7 A. That's correct.

8 Q. And without the app name being there, there's no way for  
9 the user to understand the connection between where they are  
10 right now and the developer name that they're being thrown  
11 out, right?

12 A. I -- I disagree. I think it's pretty easy because they're  
13 in the app and they're tapping a link from the app. So I  
14 think there's enough context there.

15 THE COURT: Why would you do that? Why is it not  
16 obvious that you would not have just the app name? You're  
17 talking about transparency, and that's not transparent.

18 THE WITNESS: Your Honor, I -- I believe that it's --  
19 it's a common practice when somebody links -- taps a link and  
20 then they see a sheet that it's related.

21 THE COURT: That's not -- that's not my -- that's not  
22 an answer to my question.

23 THE WITNESS: I'm sorry, Your Honor.

24 THE COURT: On average, how many apps do developers  
25 have?

1           **THE WITNESS:** Your Honor, I'm not sure.

2           **THE COURT:** No guess? No guesstimate based on your  
3 practice?

4           **THE WITNESS:** Your Honor, I would say most developers  
5 probably have one or two apps.

6           **THE COURT:** Really?

7           **THE WITNESS:** I --

8           **THE COURT:** So you don't know. Is that what you're  
9 saying?

10          **THE WITNESS:** Your Honor, I'm not sure, no.

11          **THE COURT:** And yet you want to be transparent. You  
12 don't know the answer to that question, and yet you assume  
13 that by putting that language in there, somehow you're making  
14 it more transparent for the users who you claim don't know  
15 what they're doing.

16          That's -- that's what I take from your testimony?

17          **THE WITNESS:** That's correct, Your Honor.

18          **THE COURT:** And you want me to, even though you want  
19 to be plain and transparent, you don't want me to interpret  
20 the word "scary" in the normal way that people would interpret  
21 the word "scary." That's also what you want me to take from  
22 your testimony?

23          **THE WITNESS:** Your Honor, I think, you know, I was  
24 using the term "scary" within our design team. And we, as a  
25 team, know the context that we were using it in. But I don't

1 believe there -- there was anything scary on the actual system  
2 disclosure sheet. I believe it was all factual and pretty  
3 neutral.

4 **THE COURT:** Proceed.

5 **MS. MOSKOWITZ:** Thank you, Your Honor.

6 **Q.** One last topic. You were -- I had asked you about the  
7 changes that happened between the unified sheet that had been  
8 vetted and finalized for the Netherlands and the reader app,  
9 the changes that had been made to that to arrive at the final  
10 United States injunction response, right?

11 **A.** That's right.

12 **Q.** And then you were asked about it too and you said that you  
13 assumed a number of things about why those changes were made,  
14 right?

15 **A.** That's correct.

16 **Q.** But you don't know why those changes were made, right?

17 **A.** I do not know.

18 **Q.** No one told you, right?

19 **A.** That's right.

20 **Q.** So you don't have any knowledge actually about that it was  
21 an iterative process or that we wanted to do better, right?  
22 That's not actually anything you have personal knowledge  
23 about?

24 **A.** I just -- I just assumed that based on my experience  
25 working on projects at Apple.

1 Q. Right, but you don't have any personal firsthand  
2 knowledge?

3 A. That's correct.

4 Q. And the sum of the emails you were shown, for example,  
5 1210 which was the last one we looked at, June 21st was the  
6 date of a bunch of these flurry of revisions. Do you remember  
7 that?

8 A. Off -- not off the top of my head, but I believe you.

9 Q. Okay. Do you have any idea of any meetings among any  
10 executives that happened on or around that time that may have  
11 had to do with the changes that would be made?

12 A. I don't recall.

13 Q. And you have no idea why executives may or may not have  
14 wanted those changes, right?

15 A. That's correct.

16 Q. So if Mr. Cook and Mr. Schiller were in a room together  
17 saying here's what we're going to do, you have no idea about  
18 that?

19 A. Correct.

20 MS. MOSKOWITZ: No further questions, Your Honor.

21 THE COURT: Reexam?

22 MR. WESNESKI: Nothing further, Your Honor.

23 (Pause in the proceedings.)

24 THE COURT: Is there any reason to keep this witness  
25 on recall status?

1           **MS. MOSKOWITZ:** Not that we can think of, Your Honor.

2           **THE COURT:** You're excused.

3           **THE WITNESS:** Thank you, Your Honor.

4           **THE COURT:** That means you can step down.

5           Next witness.

6           **MR. EVEN:** Your Honor, Epic calls Mr. Carson Oliver.

7                       (Pause in the proceedings.)

8           **MR. EVEN:** And, Your Honor, Ms. Tina Seideman is  
9           going to join us at counsel table for this.

10          And also if we may bring up some binders, Your Honor.

11          **THE COURT:** Mr. Oliver, take the stand. You're still  
12          under oath, sir, but we are going to go ahead and reswear you  
13          in to remind you of your obligations to this court.

14          **THE WITNESS:** Yes, Your Honor.

15          **THE COURT:** Please stand. Please raise your right  
16          hand.

17  
18                       **CARSON OLIVER,**

19          called as a witness for the plaintiff, having been duly sworn,  
20          testified as follows:

21          **THE WITNESS:** I do.

22          **THE CLERK:** Please be seated. Speak clearly into the  
23          microphone. Please state your full name and spell out your  
24          last name for the record.

25          **THE WITNESS:** My full name is Carson Oliver. My last

1 name is spelled O-L-I-V-E-R.

2 **THE COURT:** All right. Good afternoon.

3 **THE WITNESS:** Good afternoon, Your Honor.

4 **THE COURT:** You may proceed.

5 **MR. EVEN:** Thank you, Your Honor.

6 **DIRECT EXAMINATION**

7 **BY MR. EVEN:**

8 **Q.** Good afternoon, Mr. Carson. Good seeing you again.

9 **A.** You as well.

10 **Q.** When we last met back in May -- you -- sorry.

11 (Off-the-record discussion.)

12 **BY MR. EVEN:**

13 **Q.** Sir, when we last met back in May, you were the senior  
14 director of business management for the Apple App Store,  
15 correct?

16 **A.** That's correct, yes.

17 **Q.** At the time, you reported to Mr. Fischer who was the head  
18 of the store, correct?

19 **A.** That's correct, yes.

20 **Q.** Since then, Mr. Fischer has left Apple; is that right?

21 **A.** Yes.

22 **Q.** And you are now heading what is known as the App Store  
23 division; is that right?

24 **A.** That's correct.

25 **Q.** And as far as the U.S. App Store is concerned, you

1 essentially replaced Mr. Fischer; is that right?

2 A. As -- as far as the App Store is concerned, that's  
3 effectively correct.

4 Q. And as the current head of the App Store, at least in the  
5 U.S., you report directly to Mr. Schiller now?

6 A. That's correct, yes.

7 Q. You recall that we're here because of this Court's  
8 injunction that was issued back in September 10 of 2021?

9 A. Yes.

10 Q. And you were one of the leaders of the working group that  
11 was tasked with modeling, analyzing, and making  
12 recommendations on Apple's response to the injunction; is that  
13 right?

14 A. That's correct, yes.

15 Q. And in that context, you prepared slides for, presented  
16 it, and attended meetings with executives about Apple's  
17 planned response to the injunction, correct?

18 A. That's correct, yes.

19 Q. And I take it Mr. Schiller and the rest of the executive  
20 team are the people who instructed you to prepare those slides  
21 for them and -- and those analyses; is that fair?

22 A. I would say that's generally correct.

23 Q. And you analyzed and presented to the executive team on a  
24 variety of topics including the structure of the commission  
25 that Apple considered imposing on linked out purchases, the

1 placement of external links, and the design of external links,  
2 correct?

3 **A.** I would not say that I necessarily covered all of those  
4 elements in the same level, but in general, yes.

5 **Q.** And Mr. Cook, Mr. Maestri, and Mr. Schiller, as part of  
6 something referred to as the pricing committee, ultimately  
7 decided on the parameters of Apple's response to the  
8 injunction, right?

9 **A.** That's correct, yes.

10 **Q.** If you turn to Exhibit CX0202 in your binder.

11 **A.** Is it okay if I put these -- some of these old binders to  
12 the side or on the ground?

13 **MS. MOSKOWITZ:** Your Honor, may I collect them?

14 **THE COURT:** You may.

15 (Off-the-record discussion.)

16 **THE WITNESS:** Yes.

17 **BY MR. EVEN:**

18 **Q.** Without mentioning the title of this document that  
19 includes a project name that we're not allowed to say out loud  
20 in court, so don't say that name, but do you see that this is  
21 a regroup of a certain project dated September 13, 2021?

22 **A.** Would you mind repeating the exhibit number just so I can  
23 get to the tab.

24 **Q.** The exhibit number is CX0202. I believe it's probably the  
25 first or second exhibit in your binder.

1 A. Yes, I have that.

2 Q. And do you see that this is a regroup of a certain  
3 project, the name of which we shall not name, that's dated  
4 September 13, 2021?

5 A. Yes, that looks like it's the title.

6 Q. And do you see on the first page that there's a metadata  
7 sheet that lists you as a custodian?

8 A. (Reviewing document.)

9 Yes, that looks to be correct.

10 MR. EVEN: Your Honor, I move to admit CX0202 into  
11 evidence.

12 MS. RICHMAN: No objection.

13 THE COURT: It's admitted.

14 (Exhibit 0202 received in evidence.)

15 THE COURT: Ms. Richman.

16 MS. RICHMAN: Yes, I'm sorry. And I've been joined  
17 by Mr. Phillips and Ms. Dansey. I apologize.

18 THE COURT: Go ahead.

19 BY MR. EVEN:

20 Q. Now, the date of this document, September 13, 2021, is  
21 three days after the injunction in this case at issue,  
22 correct?

23 A. I believe that is correct, yes.

24 Q. And the project this document talks about was intended to  
25 consider a potential response to increased regulatory pressure

1 on Apple in several geographies to allow the use of  
2 alternative payment solutions, correct?

3 **A.** (Reviewing document.)

4 I remember this specifically related to one geography. I  
5 don't -- I don't know if this project was covering multiple  
6 geographies or just one.

7 **Q.** I've seen documents stating that this was a worldwide  
8 effort. That's why I'm asking. Do you remember it as being  
9 related to specific geography?

10 **A.** I do, but I don't have a great memory of this project in  
11 general.

12 **Q.** Okay. If you look up at the top of the page, do you see  
13 that the notes say "three options"?

14 **A.** I do, yes.

15 **Q.** And these are all potential options Apple considered at  
16 the time for responding to any requirement, either worldwide  
17 or in a particular geography, to allow alternative payments,  
18 correct?

19 **A.** (Reviewing document.)

20 Again I remember this specifically for one geography. But  
21 within the context of that geography, that looks to be  
22 correct.

23 **Q.** Okay. And the geography you remembered this for is which  
24 geography?

25 **A.** It was for Korea.

1 Q. Okay.

2 And in Korea, there were rules that required the  
3 introduction of alternative payments, correct?

4 A. That is correct, yes.

5 Q. Okay. And the very first option is one, do nothing but  
6 allow the separate payment methods in. Right?

7 A. (Reviewing document.)

8 Yes, that is what the option says.

9 Q. And what this option would mean is that there would be the  
10 removal of some guidelines that prohibit alternative payments  
11 without imposing any new requirements, correct?

12 A. (Reviewing document.)

13 Q. That's what "do nothing" means?

14 A. I don't remember specifically, but within the context of  
15 the document that seems to be reasonable.

16 Q. Okay. The second option is charge an alternative  
17 commission but audit developers, correct?

18 A. That's what it says, yes.

19 Q. And under this option, Apple would allow alternative  
20 payments but seek a commission for the use of alternative  
21 payments, correct?

22 A. That seems to be the understanding I have of it, yes.

23 Q. And this is essentially the option Apple chose in Korea,  
24 correct?

25 A. That's correct, yes.

1 Q. And this is the option that Apple chose in the  
2 Netherlands, correct?

3 A. That is correct, yes.

4 Q. And this is option that Apple chose in this particular --  
5 in response to this particular injunction in the U.S.,  
6 correct?

7 A. Probably, yes.

8 Q. And so back in September '21, the option of responding to  
9 requirements to allow alternate billing, one of the options on  
10 the table were to just allow alternative billings without any  
11 commission, correct?

12 A. That's correct, yes.

13 Q. Now, do you see about halfway down the page, a bullet that  
14 reads, "YGR opinion needs to be taken into account."

15 Do you see that?

16 A. Yes.

17 Q. And the reference to the YGR opinion here, that's a  
18 reference to this Court's injunction and opinion, correct?

19 A. I believe so, yes.

20 Q. And the notes then say, "Charging for commission, is it  
21 fine to do?" Correct?

22 A. Yes.

23 Q. And so three days after the injunction issued in September  
24 '21, this working group at Apple raised the question of  
25 whether imposing a commission on linked-out purchases is a

1 permissible option under the U.S. injunction, correct?

2 A. That seems to be correct from my reading of this document.

3 Q. Now, between September '21 and January '24 when Apple  
4 announced that it would be imposing a commission on linked-out  
5 purchases, Apple took no steps and made no effort to seek  
6 clarification from this Court to the basic question posed in  
7 this document back in September of '21, charging a commission,  
8 is it fine to do. Correct?

9 A. I'm not sure.

10 Q. You -- you're not aware of any steps that Apple has taken  
11 to get clarification from this Court as to the answer to this  
12 question, correct?

13 A. None that I'm currently aware of, but I wouldn't have been  
14 the one who was working with the Court.

15 Q. Sir, you were the one who worked on a response to the  
16 injunction for a long time, correct?

17 A. Yes, correct.

18 Q. And during this time, did anybody come up and say, we now  
19 have a clear answer to this question from the Court,  
20 definitive answer?

21 A. No.

22 Q. Thank you.

23 So you mentioned that this document, in your recollection  
24 at least, dealt with Korea. And in Korea, in August 2021, I  
25 think it was, do you recall that that was when the Korean

1 legislature adopted rules requiring Apple and Google to allow  
2 the use of alternative payment solutions for in-app purchases?

3 A. I don't remember the specific date.

4 Q. Okay. But you understand it was shortly before the  
5 September document that we just looked at, correct?

6 A. That seems reasonable to assume.

7 Q. Okay. Now in response to these new rules, do you recall  
8 that in late '21, around November, Google announced that it  
9 would allow alternative payment solutions in apps distributed  
10 through Google Play store, but that Google would charge a  
11 26 percent commission on purchases made using those  
12 alternative payment solutions?

13 A. I remember the announcement, but I don't remember the  
14 timeline.

15 Q. Okay. Do you remember that when Google made that  
16 announcement, Apple had not yet announced its own response to  
17 this statutory change?

18 A. I believe that is correct.

19 Q. And fair to say that you were interested in how Google's  
20 plan was -- would be received, correct?

21 A. In Korea, yes.

22 Q. So if you turn to Exhibit CX0266.

23 A. (Reviewing document.)

24 I'm there.

25 Q. You're there. Good. Do you see that this is a January 7,

1 2022, email, sent by an Apple employee named Shawn to you and  
2 several others with the subject Alternative Payments in Korea,  
3 developer feedback? Do you see that?

4 **A.** I see that, yes.

5 **MR. EVEN:** Your Honor, I move to admit Exhibit  
6 CX0266.

7 **MS. RICHMAN:** No objection.

8 **THE COURT:** It's admitted.

9 (Exhibit 0266 received in evidence.)

10 (Exhibit published.)

11 **BY MR. EVEN:**

12 **Q.** So first of all, who is the sender of this email?

13 **A.** It looks to be Sean Lee.

14 **Q.** Sean Lee. And what is the role of Mr. Lee?

15 **A.** At the time, he was a member of the App Store team in  
16 Korea.

17 **Q.** Okay. Is Mr. Lee still with Apple?

18 **A.** No, he is not.

19 **Q.** Okay. Now, Mr. Lee writes that per your request, he's  
20 updating you on developers' reactions, he's observing the  
21 market to Google's 26 percent commission on alternative  
22 payment solutions for in-app payments, right?

23 **A.** Yes.

24 **Q.** And the feedback Mr. Lee is conveying is that adoption is  
25 low or nonexistent, or as he puts it, quote, "We have not

1 heard developers starting to implement their own payments."

2 Close quote.

3 Do you see that? The second paragraph, second sentence.

4 It's also on your screen highlighted if that's helpful.

5 **A.** Oh, yes, that is helpful. Thank you.

6 Yes, I do see that sentence.

7 **Q.** And Mr. Lee also reports based on conversations he had  
8 with a couple of top developers, that a commission that is  
9 only 4 percent lower than the commission Google imposes on  
10 transactions using Google's own payment solution, quote,  
11 "doesn't help their business," close quote. Do you see that?

12 **A.** Just to clarify, that's what the developers communicated  
13 to him? Is that the question?

14 **Q.** Correct. Well, let's take it one at a time and break it  
15 down.

16 Do you see the last sentence of the second paragraph  
17 saying, "Having talked to a couple top developers last year,  
18 their response was the following." Do you see that?

19 **A.** I do, yes.

20 **Q.** And you understand that he's providing you feedback based  
21 on conversations he himself had with developers who have apps  
22 in Korea on the Google Play store?

23 **A.** That's my understanding, yes.

24 **Q.** And what he's saying is they feel that Google Play's new  
25 announcement doesn't help their business. Did I read that

1 correctly?

2 A. Yes.

3 Q. And he then says -- he gives reasons for that, correct?

4 A. Yes.

5 Q. And the first reason is that developers still have to pay  
6 fee to credit card 2 percent, DCB 7 to 8 percent, e-wallets  
7 1 percent. No material monetary benefit.

8 Do you see that?

9 A. I do. Yes.

10 Q. Just to clarify, DCB is Direct Carrier Billing, right?

11 A. That seems correct given the rate that it shows.

12 Q. Okay. And that is when somebody purchases something and  
13 instead of paying in the app, the payment goes directly to  
14 their cellular carrier bill, like go to Verizon or AT&T in the  
15 U.S.; correct?

16 A. That's correct.

17 Q. And so that part of the sentence essentially says it's  
18 just as expensive for these developers or roughly just as  
19 expensive to use this alternative with a 26 percent fee and  
20 therefore there's not a material monetary benefit, correct?

21 A. Yes, that's what the bullet says.

22 Q. And then in the parenthetical, he goes further and says in  
23 some cases would be payment fees would cost more, which means  
24 would cost more than using Google's in-app payment system,  
25 correct?

1 A. I would assume that's what that means, yes.

2 Q. Now, about a week after this email in mid-January '22, in  
3 response to a separate regulatory change, Apple announced that  
4 it would allow alternative payment solutions in dating apps in  
5 the Netherlands; do you remember that?

6 A. That is correct, yes.

7 Q. And in the Netherlands, Apple imposed a 27 percent  
8 commission on transactions that use alternative payments,  
9 right?

10 A. That's correct, yes.

11 Q. Even higher than the 26 percent that this email was  
12 talking about, right?

13 A. Yes, it was a different market.

14 Q. Then in late June '22, Apple enabled alternative payments  
15 for in-app transactions in Korea, right?

16 A. That's correct, yes.

17 Q. And with the feedback we just reviewed in mind, Apple  
18 imposed a 26 percent commission on in-app transactions made  
19 using an alternate payment solution in Korea, correct?

20 A. That's correct, yes.

21 Q. Okay. Now, consistent with the feedback you received from  
22 Mr. Lee, very few iOS app developers actually opted to use  
23 alternate payments in either the Netherlands or Korea; isn't  
24 that right?

25 A. It is a handful, yes.

1 Q. So, for example, as of October 2022, ten months into the  
2 Netherlands program and four months into the Korea program,  
3 only one developer had signed up for alternative payments  
4 across the two programs.

5 A. That seems roughly correct, yes.

6 Q. Now, last time you testified that as you were planning  
7 your response to the injunction, your team was speaking to  
8 large developers about the linkout entitlement program. Do  
9 you recall that?

10 A. I believe that I was speaking about after we'd announced  
11 the injunction that we were speaking to large developers. Or  
12 after we announced our response to the injunction.

13 Q. Okay. Well, let's see one that you spoke to while you  
14 were considering.

15 So if you go to Exhibit CX0246.

16 Are you there?

17 A. No.

18 Q. Let me know when you're there.

19 A. (Reviewing document.)

20 Okay.

21 Q. And this is as email titled "Privileged and confidential  
22 forward Bumble, Inc. alternative billing program learnings for  
23 App Store." Correct?

24 A. Yes.

25 Q. And if you turn to that exhibit in the binder, you see

1 that it's an email from Mr. Canter, Chip Canter, to you and  
2 others. Do you see that?

3 **A.** That's correct, yes.

4 **Q.** And do you see that Mr. Canter is -- that's I think around  
5 page 5 or 6 -- attaching a presentation, a slide deck dated  
6 May 2023 entitled Bumble, Inc. X alternative Payment Learnings  
7 for App Store.

8 Do you see that?

9 **A.** I do, yes.

10 **MR. EVEN:** Your Honor, I move to admit Exhibit CX0246  
11 into evidence.

12 **MS. RICHMAN:** Your Honor, no objection except for in  
13 my binder. There are like a hundred pages here of just  
14 printed blank pages. Is that --

15 **MR. EVEN:** And I apologize for that. That -- I meant  
16 to preempt this.

17 Your Honor, this is the way the document was produced to  
18 us. And because we're lawyers --

19 **THE COURT:** Okay.

20 **MR. EVEN:** -- we don't cut documents. But --

21 **THE COURT:** That's fine. I'll -- I'll admit to  
22 page 17. And the record can reflect that pages 18 through 220  
23 are blank.

24 **MS. RICHMAN:** Thank you, Your Honor.

25 **THE COURT:** And I'll take them out of my binder and

1 find some use for them.

2 **MR. EVEN:** Thank you, Your Honor.

3 (Exhibit 0246 received in evidence.)

4 **BY MR. EVEN:**

5 **Q.** So let's start with the email to you from Mr. Canter.

6 (Exhibit published.)

7 **BY MR. EVEN:**

8 **Q.** Mr. Canter leads your apps business development team; is  
9 that right?

10 **A.** That's correct, yes.

11 **Q.** And that was true back in May of '23 as well, correct?

12 **A.** Yes.

13 **Q.** And the word "Bumble" in the subject line and throughout  
14 the email, that refers to Bumble, Inc., the developer of the  
15 Bumble dating app and some other dating apps as well, correct?

16 **A.** Yes, I believe so.

17 **Q.** And you agree that Bumble is a large, well-known  
18 developer, correct?

19 **A.** Yes.

20 **Q.** So Mr. Canter states in the top email that Bumble shared  
21 some of its thoughts on Google UCB, e.g., alt billing, to  
22 provide their recommended guidance to Apple and Apple's  
23 response to the injunction and the DMA in Europe.

24 Do you see that?

25 **A.** I do, yes.

1 Q. So let's just unpack some of the acronyms here.

2 So first of all, Google UCB refers to Google user choice  
3 billing; is that right?

4 A. I believe so, yes.

5 Q. And you know that Google user choice billing is a program,  
6 I think back then it was a pilot program where Google allowed  
7 certain developers to use alternative billing for in-app  
8 purchases and Google imposed a commission of 26 percent on  
9 purchases made through such alternative billing solutions.  
10 Right?

11 A. That's my general understanding of the program, yes.

12 Q. And if you turn quickly just for a second to 246.7, do you  
13 see that Bumble is reminding Apple that it was the second  
14 developer chosen by Google to try out Google UCB in the  
15 United States.

16 A. (Reviewing document.)

17 Sorry. I -- I don't remember this document. Do you mind  
18 if I take a minute to just --

19 Q. Sure.

20 A. -- make sure I --

21 (Witness reviewing document.)

22 **THE WITNESS:** Okay. I have broadly reviewed the  
23 document. I don't remember it. So I may need some additional  
24 time to review it if you ask more detailed questions.

25 / / /

1 **BY MR. EVEN:**

2 **Q.** That's fine. I think we can walk through it together, and  
3 bear with me. And if you need more time, just let me know and  
4 I'll let you read what you need to read.

5 Do you see on page 246.7 at the top, it says context  
6 setting, Google user choice billing announced in spring 2022  
7 for nongame apps with Bumble, Inc., announced a second  
8 strategic pilot partner in November 2022?

9 **A.** I do, yes.

10 **Q.** And Bumble also reports that before adopting UCB, Bumble  
11 actually used its own billing platform in its Android app,  
12 correct?

13 **A.** Yes, I see that.

14 **MS. RICHMAN:** Excuse me, Your Honor. I'm so sorry to  
15 interrupt. But could we have this taken down from the public  
16 screens? This is third-party confidential information.

17 **MR. EVEN:** Okay. Happy to take it down, although  
18 I -- we have redacted anything that we thought is even  
19 remotely --

20 **MS. RICHMAN:** It's not Apple's data so --

21 **THE COURT:** Well, that particular slide referenced a  
22 news article, right? So --

23 **MS. RICHMAN:** Yeah.

24 **THE COURT:** -- given that it's a news article, I  
25 don't know how confidential it could be.

1           **MS. RICHMAN:** Of course, Your Honor. I'm just  
2 looking a couple pages ahead and there is some data.

3           **MR. EVEN:** There is. And I'm not going to show any  
4 data that is --

5           **MS. RICHMAN:** Okay.

6           **MR. EVEN:** -- numerical data or anything.

7           **MS. RICHMAN:** Again, I apologize.

8           **MR. EVEN:** Okay.

9           **Q.** So based on the fact that Bumble was chosen by Google to  
10 try out UCB, had tried its own billing, is a large developer,  
11 certainly Bumble was a developer with some valuable experience  
12 in the space of using alternative billing; fair?

13           **A.** It looks like they had used alternative payments in the  
14 past with Google.

15           **Q.** Okay. And you agree with me that their experience from  
16 doing that would be valuable for someone who's planning a  
17 response to an injunction that requires allowing steering  
18 [sic] to use alternative payments.

19           **A.** We're always interested in feedback from developers.

20           **Q.** Okay. And you -- you agree with me that among the  
21 feedback from developers, feedback from somebody who actually  
22 has tested something and is a large serious developer is more  
23 meaningful than input from somebody you have -- you barely  
24 know or who hasn't tried alternative payments ever, correct?

25           **A.** Yes, with the caveat that the implementation details will

1 matter here.

2 Q. Okay. Going back to Mr. Canter's email.

3 (Exhibit published to witness, counsel, and the Court.)

4 BY MR. EVEN:

5 Q. He states that high level, their recommendation to allow  
6 third-party in-app billing that either has no commission or  
7 varying rate to accommodate the cost of payments.

8 Do you see that?

9 A. (Reviewing document.)

10 I see that, yes.

11 Q. Okay. If you go to page 2 of the document, you see that  
12 this is an email from Ms. Segodnia of Bumble. Do you see  
13 that?

14 A. I do, yes.

15 Q. And in the second paragraph, three lines in, do you see  
16 that she says optimizing the billing user experience for fewer  
17 steps and a better user experience has a significant impact on  
18 transaction conversion rates. Do you see that?

19 A. (Reviewing document.)

20 I do, yes.

21 Q. Now, transaction conversion rates means the rate at which  
22 transactions are completed, correct?

23 A. I -- I'm sorry. I don't know in this specific case.

24 Q. You have no understanding as the current head of the Store  
25 what developers talk about when they transaction conversion

1 rates?

2 **A.** It really depends on a variety of different variables  
3 so...

4 **Q.** Okay. We'll get to that maybe.

5 In the next bullet point Ms. Segodnia writes that payment  
6 processing fees are higher for developers overall than the  
7 3 percent or 4 percent currently set aside under UCB and other  
8 alternative billing programs. Do you see that?

9 **A.** I do, yes.

10 **Q.** Okay. And you understand that Mr. [sic] Segodnia here is  
11 conveying that when Apple is charging a commission of 26 or  
12 27 percent on alternative payment solutions, the overall cost  
13 to the developer, including the cost of processing the  
14 payments through an alternative billing solution, any kind of  
15 support, fraud detection, et cetera, would be more than the  
16 30 percent that Apple charges for transactions conducted  
17 through IAP?

18 **A.** I think they're talking specifically about Google's  
19 program here.

20 **Q.** Sir, Ms. Segodnia is writing this as feedback for Apple,  
21 for Apple to use in Apple's implementation of this injunction,  
22 correct?

23 **A.** I don't know what they were providing it for. I see what  
24 they said, and I see what my team member said.

25 **Q.** And you see that what they said was that this is

1 alternative payment learnings for App Store, right?

2 A. (Reviewing document.)

3 Q. That's what they said in the heading of their slide deck.

4 A. Yes, and I interpret that to mean that it was delivered to  
5 the App Store team.

6 Q. And you see that your team member said that they shared  
7 their thoughts on Google UCB to provide their recommended  
8 guidance to Apple on both DMA and U.S. Epic ruling; correct?

9 A. I see what my team member wrote, but not what the member  
10 of the Bumble team wrote.

11 Q. Okay. So you believe your team member, I assume, right?

12 A. I don't remember this document.

13 Q. That's not what I asked. You believe that Mr. Canter,  
14 when he reports to you, he tries to be accurate and truthful,  
15 right?

16 A. Yes.

17 Q. Okay. And so when he tells you Bumble gave us something  
18 so that we can consider it as guidance when we think about DMA  
19 and injunctions response, you understood that he's conveying  
20 to you that either based on a communication he had with Bumble  
21 or something else, he knows that that was the goal of what  
22 Bumble did. Right?

23 A. Again, I don't remember what the intent of this was.

24 Q. That's not what I'm asking, sir. I'm asking you  
25 understand, reading this, that Mr. Canter is conveying that

1 message to you and that you have no basis to doubt that what  
2 he's telling you is true?

3 A. I understand what Chip was conveying to me, yes.

4 Q. And you don't have any doubt that what he's conveying to  
5 you is true, correct?

6 A. I'm just noting that there's a difference between what he  
7 conveyed and what the Bumble team conveyed in their own email.

8 Q. Okay. So you think Mr. Canter made it up?

9 A. No.

10 Q. Going back to what Ms. Segodnia said, she talked about  
11 payment processing fees are higher for developer overall than  
12 the 3 percent or 4 percent currently set aside under UCB and  
13 other alternative billing programs, right?

14 A. I see that sentence, yes.

15 Q. Okay. That doesn't say anything about Google. That talks  
16 about 3 and 4 percent currently set aside under UCB and other  
17 alternative billing programs, correct?

18 A. (Reviewing document.)

19 Yes, but based on my --

20 Q. Sir, I'm just asking a simple question.

21 A. It did --

22 (Simultaneous colloquy.)

23 **THE WITNESS:** It does not say Google.

24 **BY MR. EVEN:**

25 Q. It does not say Google. Thank you.

1 And Apple did in fact at the time, as we just established,  
2 had two programs where Apple set aside, to use Ms. Segodnia  
3 language, 4 percent and 3 percent respectively, in Korea and  
4 in the Netherlands.

5 **A.** I know our Netherlands one was live at that point. I  
6 don't remember if the Korea program was live at that point.

7 **Q.** Sir, I just asked you if Korea went live in June of 2022 a  
8 year before --

9 **A.** Oh --

10 **Q.** -- this deck and you said yes.

11 **A.** -- sorry. Sorry.

12 **Q.** Are you changing?

13 **A.** No, no, I was looking at the wrong year. Yes, 2022, yes.

14 **Q.** Okay. So you understand that when Ms. Segodnia is  
15 conveying here is that 3 percent to 4 percent is not enough to  
16 allow alternative payments to make financial sense for  
17 developers. Do you understand that?

18 **A.** As it relates to Google's program is what I understand.

19 **Q.** So you think it doesn't make sense for -- financial sense  
20 for Google, but it would make sense for Apple. Okay.

21 Let's proceed. Let's turn to the attached slide deck and  
22 to a slide on page 8 titled Bumble, Inc.'s key asks for  
23 alternative payment solutions in platform stores in order to  
24 maximize revenue and optimal user experience.

25 Do you see that?

1 A. I do, yes.

2 Q. And you understand that these are asks for Apple, not just  
3 for Google, correct?

4 A. Yes. I believe that it's correct.

5 Q. Okay. The second bullet labeled UX and UI flexibility,  
6 Bumble asks for minimal UX design mandates from platform  
7 stores to allow optimal trustworthy conversion.

8 Do you see that?

9 A. I do, yes.

10 Q. And UX means "user experience" here, right?

11 A. Yes, I believe so.

12 Q. And UI means "user interface," right?

13 A. Yes.

14 Q. Okay. Turning to page 12, the slide is titled "User  
15 experience design requirements should be minimal and optimized  
16 for low friction transaction flow to ensure maximized  
17 conversion and optimal user experience."

18 Right?

19 (Exhibit published.)

20 **THE WITNESS:** That's correct.

21 **BY MR. EVEN:**

22 Q. Okay. Do you understand that here, conversion means how  
23 many transactions actually get completed?

24 A. Will you give me just a minute to review this slide  
25 specifically.

1 Q. Sure.

2 (Pause in the proceedings.)

3 BY MR. EVEN:

4 Q. Sir, it's not a complicated question.

5 A. No, I'm just trying to read the whole slide.

6 Q. I didn't ask you about the whole slide. I just asked you  
7 if, as the head of the Store, you understand that conversion  
8 means how many transactions actually get completed.

9 A. Relative to this slide, I understand that conversion --  
10 transaction conversion is referencing the purchases that  
11 happened from within the app.

12 THE COURT: So the answer is yes.

13 THE WITNESS: Yes. I just wanted to make sure it was  
14 specific to this slide, not in general.

15 BY MR. EVEN:

16 Q. Okay. And the slide then states that because Google  
17 mandates additional steps as part of the UCB checkout flow,  
18 there is a drop in transaction conversion and poor user  
19 experience, correct?

20 A. I see the mention of the dropoff rate. And -- and I see  
21 the poor user experience reference as well.

22 Q. Okay. So that's a "yes" again?

23 A. Yes.

24 Q. And a drop in transaction conversion, as understood by the  
25 industry and by you for this slide, means that fewer

1 transactions are completed and more transactions are  
2 abandoned, correct?

3 **A.** (Reviewing document.)

4 That would be my understanding, yes.

5 **Q.** Okay. If we turn to the next slide, 246.13.

6 (Exhibit published to witness, counsel, and the Court.)

7 **BY MR. EVEN:**

8 **Q.** Do you see this one talks about Apple's design, correct?

9 **A.** (Reviewing document.)

10 Yes. It looks like it does.

11 **Q.** And -- and you see that this says specifically, Apple  
12 mandates UX with extra step that may result in poor user  
13 experience. Do you see that?

14 **A.** Yes, I do.

15 **Q.** Okay. And what this shows is Apple's design for the  
16 Netherlands, correct?

17 **A.** Yes, it looks to be the Netherlands.

18 **Q.** Now, in the Netherlands -- I'm not sure we mentioned that,  
19 but Apple was required to allow alternative payments only in  
20 dating apps, correct?

21 **A.** That's correct, yes.

22 **Q.** And so Bumble was actually one of a relatively small  
23 number of developers who was entitled to use alternative  
24 payments in the Netherlands, correct?

25 **A.** Relative to the whole catalog, yes.

1 Q. That's a yes, it's a relatively small number of developers  
2 who can use it? Only developers of dating apps, correct?

3 A. Yes.

4 Q. Okay. Let's go back to Slide 11.

5 MR. EVEN: And let's not put that one up on the  
6 screen, please.

7 Q. And this slide is titled "Platform fee reduction for  
8 payment processing fees should reflect actual payment  
9 processing costs incurred by developers." Do you see that?

10 A. I do, yes.

11 Q. And here, under the heading, Bumble tells Apple in the  
12 first bullet points, the developers take on fraud protection  
13 costs in addition to payment processing fees, right?

14 A. Yes.

15 Q. And then to the right of that -- sorry, going to the next  
16 bullet, it also says payment processing fees average out  
17 significantly higher than the 3 percent fee difference Apple  
18 instituted in the Netherlands, correct?

19 A. Yes, that's roughly what the bullet says.

20 Q. And Bumble also is saying that payment processing fees  
21 average out to more than the 4 percent fee difference Google  
22 instituted under UCB and in Korea, correct?

23 A. Yes.

24 Q. And on the right-hand side of the page is a table of  
25 payment processing fees for Bumble for certain forms of

1 payments, correct?

2 A. Yes.

3 Q. And you understand that these are actual numbers of the  
4 costs to Bumble of payment processing?

5 A. I'm not sure exactly what they are.

6 Q. Okay. It says sample FOP fees for Bumble in top revenue  
7 markets. Do you see that?

8 A. Yes. I'm sorry, I don't know what FOP refers to.

9 Q. You don't know what FOP is?

10 A. I'm sorry, I don't.

11 Q. You never heard the term "form of payment."

12 A. I just now did.

13 Q. Okay. Without mentioning any numbers on this slide, if  
14 you go all the way down, do you see that Bumble reports the  
15 fees that it faces in the United States for credit cards,  
16 PayPal and Venmo?

17 A. Yes, I do.

18 Q. And without stating the numbers, you would agree with me  
19 that these processing fees, setting aside the fraud detection  
20 they were talking about and all that, these fees in and of  
21 themselves are more than 3 percent, right?

22 A. These numbers are more than 3 percent. But I'm not sure  
23 if these --

24 Q. Sir, I just asked a simple question. The numbers reported  
25 here by Bumble for the United States for these three forms of

1 payments are more than 3 percent, correct?

2 **A.** But you stated in your prior question that they included  
3 the fraud protection costs or not, and I'm not sure whether  
4 they do.

5 **Q.** You're not sure. Okay. Let's look at the rest of slide.  
6 Maybe you'll understand.

7 To the left of the chart, Bumble cites what it's called --  
8 what it calls proposed solutions, right?

9 **A.** Yes.

10 **Q.** And it states that Apple should, quote, vary rates to  
11 match payment method basis, close quote, or, quote, revise the  
12 4 percent global average to developers' actualized average.

13 Do you see that?

14 **A.** I see that, yes.

15 **Q.** Okay. And in the second bullet where it says revise the  
16 4 percent global average closer to developers' actualized  
17 average, the number that Bumble proposes as actual average,  
18 those are multiples of 3 percent, correct? Without naming the  
19 numbers.

20 **A.** They are, yes.

21 **Q.** I take it you don't remember this slide deck. I take it  
22 you also don't remember ever responding to Bumble to say your  
23 data is out of whack, that's not true, or anything like that,  
24 correct?

25 **A.** I don't remember this document or email.

OLIVER - DIRECT / EVEN

1           **MR. EVEN:** Okay. Your Honor, I'm about to move to a  
2 completely different topic so if this is --

3           **THE COURT:** All right. Why don't we go ahead and  
4 break for the day.

5           Mr. Oliver, you are instructed that given that you're  
6 still under examination, you cannot have any discussions with  
7 anyone whatsoever about your testimony, including lawyers,  
8 friends, family, no one. Understand me?

9           **THE WITNESS:** Yes, Your Honor.

10          **THE COURT:** Okay. Then we'll stand in recess and get  
11 started again tomorrow morning at 8:30.

12          We're adjourned for the day.

13          (Proceedings were concluded at 4:02 P.M.)

14                               --o0o--

15                               **CERTIFICATE OF REPORTER**

16  
17               I certify that the foregoing is a correct transcript  
18 from the record of proceedings in the above-entitled matter.  
19 I further certify that I am neither counsel for, related to,  
20 nor employed by any of the parties to the action in which this  
21 hearing was taken, and further that I am not financially nor  
22 otherwise interested in the outcome of the action.

23                               *Raynee H. Mercado*

24               Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

25                               Monday, February 24, 2025